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REPORTS OF COMMITTEES

OF THE

HOUSE OF REPRESENTATIVES,

MADE

DURING THE FIRST SESSION

OF THE

THIRTY-SIXTH CONGRESS:

1859-'60.

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THE HOUSE OF REPRESENTATIVES.

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36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 322.

FRANCIS LAVONTURE AND PIERRE GRIGNON.

[To accompany Bill H. R. No. 556.]

APRIL 2, 1860.

Mr. C. C. WASHBURN, from the Committee on Private Land Claims, made the following

REPORT.

The Committee on Private Land Claims, to whom was referred the petition of Daniel Whitney, praying that an act may be passed requiring the Commissioner of the General Land Office to issue a patent for a certain parcel of land, described in the said petition, to the confirmee, as in other cases, according to section 5 *of the act of* 1823, *respectfully report:*

That they have examined the papers and proofs, and they find that on the 15th day of September, 1823, Francis Lavonture presented to the commissioner appointed in the act of 1823 to hear and determine the claims of persons to tracts of land occupied and cultivated by them in the Green Bay settlement, on the 1st of July, 1812, his claim, and the testimony to support it, to a tract of land described as follows:

"Commencing at low-water mark on Fox river, and running west eighty arpents, or so far as to make said claim contain six hundred and forty acres, as confirmed by said commissioners; and bounded on the south by a certain tract occupied by the United States garrison; west and north by wild or uncultivated lands; and east by Fox river, being 16 arpents in breadth."

And that at the same time Pierre Grignon presented to said commissioners his claim, and testimony to support it, for a tract of land described as follows, viz: "A piece of ground lying and being on the west side of Fox river, Green Bay, immediately below the first creek that empties into said river, about fifteen acres in front on said river, and extending back indefinitely."—(See Am. State Papers on Public Lands, vol. 4, p. 721.)

That the said commissioners decided that the claims be confirmed, and that they were not in conflict with any confirmations before made, (vol. 4 Am. State Papers, Green's edition,) and that they gave their certificate to the correctness of the proceedings had before them. That although by the act those proceedings confirmed and made perfect the title, vesting the same in the said Lavonture and Grignon, yet the said tracts of land were embraced in a report made by the said commissioners to the Secretary of the Treasury upon all the unsettled claims in Michigan.

That the Secretary of the Treasury, instead of executing or carrying into effect the law of 1823, and instead of selecting the doubtful and uncertain claims from those which were confirmed, decided to lay all the claims before Congress, and submit all the decisions of the commissioners to it for supervision, refusing to cause the claims actually confirmed by law to be surveyed, and patents to be issued to the claimants.

That on the 17th of April, 1828, Congress passed an act to confirm certain claims passed upon by the commissioners, excluding those in the county of Michilimackinac, and also certain lands occupied by the United States for military purposes. That about the time of the passage of this act the President of the United States (upon erroneous representations) was induced to make a large military reservation of land, in the vicinity of Fort Howard, at Green Bay, amounting to five or six thousand acres. In this tract was included the land of Francis Lavonture and Pierre Grignon. The confirmatory act of 1828 was therefore of no benefit to them in procuring them the evidence of their title, as the Secretary, after its passage, refused the patent because their land was thus embraced in the reservation.

That the title to the land continues in this condition, although the post, as a military station for troops, has been abandoned, and every part of the reservation has ceased to be occupied for military or government purposes. That the lands are not now required for such purposes, notice having been given, during the year 1854, by the Secretary of War, for their sale; and that no compensation was ever made to the said Francis Lavonture and Pierre Grignon for thus taking their land.

The action of the War Department seems to render it necessary, to relieve the claimants, to pray for an act of Congress in their behalf.

Under these circumstances, your committee herewith report a bill, requiring the Commissioner of the Land Office to cause said tracts of land to be surveyed in the same manner as other private claims to lands at Green Bay, and that he be required to issue a patent to the said Francis Lavonture and Pierre Grignon, their legal representatives and assigns, according to the provisions of the act of 1823, and recommend its passage.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES, { REPORT No. 323.

PHINEAS G. PEARSON.

[To accompany Bill H. R. No. 100.]

APRIL 2, 1860.

Mr. FENTON, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Phineas G. Pearson, report:

That it appears from the papers filed in the case that said Phineas G. Pearson enlisted in the month of June, 1846, as a private in the company of Captain David Irie, company C, 2d regiment of Ohio volunteers, commanded by Colonel Morgan; that he marched with his said company from Highland county, Ohio, to Camargo, in Mexico, and continued in the service of the United States until the 13th September, 1846, when he was discharged from the service on account of a surgeon's certificate of disability. The petitioner states that, while at Camargo, in the latter part of August, 1846, he was attacked with *measles*, which were very prevalent in the camp, was very sick for about two weeks, when he partially recovered; but in a few days after took a relapse and became very sick with diarrhœa, attended with *fever*, and finally, his left leg below the knee became affected with severe pains, and was so much swollen he was unfitted for service, and was consequently discharged. He returned to the United States, and suffered very great pain on account of the ulceration of his leg until the 10th day of December, 1851, when he was compelled to submit to the amputation of the leg above the knee, in order to save his life.

Several witnesses, who are certified to be credible, swear to the fact of his enlistment and of his good health prior to his entering the service, and his condition after he returned home.

Absalom Vickery, Francis Vickery, E. Van Buskirk, and Thomas T. Butler, who are certified to be credible and competent surgeons, swear to the condition of his leg to the time of amputation, and their belief that the ulceration and consequent amputation was the result of the disease contracted in the service. Your committee believe this to be a meritorious case, and ask leave to report a bill for his relief.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 324.

JOHN PURCELL.

[To accompany Bill H. R. No. 101.]

APRIL 2, 1860.

Mr. FENTON, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom were referred the memorial and accompanying papers of John Purcell, report:

That the memorialist enlisted at Fort Wayne, Indiana, in October, 1855, in company C, tenth regiment of United States infantry; "that whilst on extra duty at Fort Ripley, Minnesota Territory, on the 2d day of January, 1857, he was seized with epileptic fits, prostrating him to the ground, from whence he was carried to the hospital, from whence he was discharged." The Pension office refused him a pension on the ground that it had been certified that the fits to which he is now subject were hereditary, and therefore they could not have been produced by the fatigue and labor incident to the service.

Ten or fifteen witnesses, who have known the petitioner for a number of years, testify to his having been, previous to entering the service, a very robust man, sound and healthy in every respect.

James A. S. Carpenter and Samuel St. John, who are reputable physicians, swear that the disease was produced by the exposures of the service, and was *not* hereditary.

The Hon. Charles Case, a member of the House of Representatives, knows the witnesses, and says that they are all men of high standing for truth and veracity.

The committee are unanimous in the opinion that, if the disease was hereditary, it was the duty of the army surgeon to have found it out before he was enlisted; his failing to do so is sufficient to justify the committee in believing that it was produced by the fatigues and exposures of the service. They report a bill for one-half disability.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 325.

THOMAS W. PHELPS.

[To accompany Bill H. R. No. 558.]

APRIL 2, 1860.

Mr. FENTON, from the Committee on Invalid Pensions, made the following

REPORT.

From the petition and evidence in this case it appears that petitioner entered on board of the United States brig Somers in May, 1842, as boatswain's mate, and in the month of August thereafter was promoted to gunner's mate. That during his service on board of said vessel, and while in the line of his duty, from sudden colds and other causes, he contracted a disease in his eyes, which eventually produced total blindness. That he was sent to the Naval Hospital in New York from the brig Somers on the 2d day of September, 1842, and remained therein until the 8th day of June, 1843, when he was discharged from the naval service as an invalid. He produces the following original certificate: "Thomas W. Phelps, gunner's mate, was admitted into this hospital September 2, 1842, from the brig Somers, with ophthalmy, and was discharged from the service June 8, 1843. The above is the only account of his case to be found on the records of this hospital. New York, December 14, 1853.

CHAS. CHASE, *Surgeon.*"

The following is a copy of the medical survey and order for the discharge of said Phelps:

UNITED STATES HOSPITAL,
Brooklyn, May 26, 1843.

The following named men, patients in this hospital, are, in my opinion, unfit for the service, and are desirous of being discharged from it. I respectfully request that a survey may be holden upon them. 1st. Thomas W. Phelps, admitted September 2, 1842, from brig Somers for ophthalmy.

I am, sir, very respectfully, your obedient servant,

B. TICKNOR, *Surgeon.*

Com. J. R. SANDS,
Commanding Navy Yard, Brooklyn.

COMMANDANT'S OFFICE, NAVY YARD,
Brooklyn, May 27, 1843.

GENTLEMEN: Be pleased to examine the above-mentioned men, and report to me their condition and fitness for service, &c.

I am, gentlemen, respectfully,

JOHN R. SANDS,
Commander United States Navy.

Surgeons JOHN S. WILEY and JOHN HASLETT,
United States Navy.

UNITED STATES HOSPITAL,
Brooklyn, June 1, 1843.

SIR: In obedience to the foregoing order, we have held a careful survey on the men named in it, and report that Thomas W. Phelps, gunner's mate, Veve Price, landsman, &c., &c., are all, in our opinion, unfit for the naval service, and recommend that they be discharged from it. We are, sir, very respectfully, your obedient servants,

JOHN P. WILEY,
JOHN HASLETT,
Surgeons.

Com. JOHN R. SANDS,
Commander Navy Yard, Brooklyn.

NAVY DEPARTMENT, *June* 3, 1843.

Commander Navy Yard, New York:

SIR: You are authorized to discharge Thomas W. Phelps, Veve Price, Wm. Chappel, John Warrel, Emery Saddler, Michael H. Cutts, Isaac Sherman, Michael Oxford, and John F. Ehler, all reported unfit for the service in the communication forwarded by you on 1st inst.

I am, respectfully, yours,

A. THOMAS SMITH,
Acting Secretary.

Mrs. Catharine Follet, of Troy, New York, mother of petitioner, states on oath that he was in good health when he entered the naval service, and never had any disease of his eyes; and that when he returned home, after his discharge, he stated that his blindness came upon him while in the service on the Somers, and that it was occasioned by a cold which he took on that vessel; and deponent verily believes he was so injured, &c.

Asa Gardner, of New York city, (merchant,) in his affidavit, August 21, 1855, says he "was well acquainted with petitioner for three or four years before he entered as gunner's mate on board the brig Somers, in 1842." That the eyesight and general health of said Phelps was always excellent before that time; and, to deponent's knowledge, he was during that time in the United States naval service; deponent saw him after he was discharged from the brig Somers in the year 1843, at the Naval or Marine Hospital in Brooklyn, where he was then being treated for inflammation of his eyes. That said Phelps, after being in said hospital for a considerable period, was dis-

charged at his request, and came to deponent's house; and deponent was in the habit of seeing him almost daily, after that period, for some months; and said Phelps was still suffering from said disease of the eyes, which continued to grow upon him, and has now resulted in his total blindness. That said Phelps is without means of living, and is unable to procure a livelihood from manual labor.

Charles A. Wilson, of the city of New York, in his affidavit of the 21st of August, 1855, states that he has been for some time acquainted with Thomas W. Phelps, who is applying for a pension, and knew him first on board of the brig Somers, in the year 1842, the said Phelps being then gunner's mate on said vessel, and deponent sailmaker's mate on board of said vessel. That he was at first in good health, and his eyesight not at all impaired, but some months afterwards the said Phelps complained of an inflammation of his eyes, occasioned, as deponent was informed and believes, in the first instance, by an injury on his head while on board of said vessel. Deponent further says, to his knowledge, the said Phelps was sent from said vessel to the Marine Hospital, at Brooklyn, on account of said injury to his eyes. Deponent further says that he saw the said Phelps last, about four weeks since, at No. 1, Rutger's Place, New York, and he was at that time totally blind; and further says that he well knows, from his own observation, that such disease of the eyes was contracted by said Phelps on said government vessel while in discharge of his duties, and he has been informed by said Phelps, and others, that such disease has resulted in total blindness as aforesaid.

All the witnesses are certified as credible, and the main facts in the case are sworn to by the petitioner. In his petition of February, 1852, it is stated that while petitioner was in the service he contracted a disease which finally resulted in entire loss of his sight, and that he had then been blind for more than eight years. The petition is signed by Thomas W. Phelps; also by J. W. Ayer, alderman 8th ward, Troy, New York; G. Robertson, jr., recorder; Charles Parmalee, county judge; F. T. Blinn, surrogate; T. Romeyn, J. Pierson, and A. B. Olin, the latter a member of this House. The claim of petitioner was rejected at the Pension office on the ground of insufficient evidence, but represented by the Commissioner as "a fair claim for the consideration of Congress." The committee deem the evidence adduced satisfactory, and think the petitioner was entitled to and should have received a surgeon's certificate for a pension when he was discharged from the naval service. It appears that he has been totally disabled from labor ever since that period, and that he is very poor and destitute. The committee, therefore, report a bill allowing him a pension of $9 50 per month, from the date of his disability and discharge, for and during his natural life, and recommend its passage.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 326.

HARRIET S. WYMAN.

[To accompany Bill H. R. No. 559.]

APRIL 2, 1860.

Mr. FENTON, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Harriet S. Wyman, report:

That the petitioner applies for relief as the widow of Captain Thomas W. Wyman, alleging that he died of disease contracted while he was in the line of his duty in the service of the United States.

As to the primary facts of service, rank of the deceased, and his intermarriage with the petitioner, there is no room for question. It appears that he entered the navy in the year 1810, and continued in that branch of the public service until his death, on the 24th February, 1854, at Florence, Italy, whither he had gone for his health.

The only question upon which any doubt has been suggested is, whether Captain Wyman died of a disease contracted "in the line of his duty;" and we are entirely satisfied that he did so upon any other than a much too limited and rigorous construction of this statutory expression. The petitioner adduces the evidence of several surgeons in the navy who were acquainted with Captain Wyman at different periods of his service, and upon the testimony of these, based in part upon a *post mortem* examination, and the declarations of the deceased on his death-bed, we are of opinion that the disease of which he died was, in its ultimate form, a disease of the heart, (hypertrophy of the heart,) and that it was consequent on a series of rheumatic attacks with which the deceased was first visited after a period of at least three years' service on the East India station, and which were greatly aggravated by his subsequent and sudden transfer from that tropical region to our northernmost navy yards, at Portsmouth, New Hampshire, and Kittery, Maine.

Surgeon Lockwood says, that during Captain Wyman's first cruise on the East India station, from 1837 to 1840, he "was *free from rheumatic or cardiac disease*, but while there he suffered severely from the climate in derangement of the functions of the liver and bowels, which probably predisposed his system to other diseases."

Surgeon Guillow, speaking of a subsequent cruise of Captain W., in the Columbus in 1845, 1846, 1847, and 1848, says, that he (Captain W.) was treated by him for "chronic rheumatism with occasional irregularities in the action of the heart."

Surgeon Kellogg, who knew Captain W. while at the navy yard at Portsmouth, says, "although it is impossible to state that the disease of the heart, of which I am informed he died, originated while he was on duty, I am of opinion it did, and that these attacks of rheumatic gout laid the foundation of the disease which finally proved fatal."

Now, as at least four reputable medical experts concur in this opinion of Surgeon Lockwood, we cannot but feel that we should be doing great injustice were we to withhold the relief prescribed for the widow of an officer of Captain Wyman's rank, and accordingly report a bill, and recommend its passage.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 327.

MILWAUKIE LIGHT-HOUSE.

APRIL 2, 1860.—Ordered to be printed.

Mr. ELIOT, from the Committee on Commerce, made the following

REPORT.

The Committee on Commerce, to whom was referred the memorial of "shippers, navigators, and others," asking for an appropriation for a light-house at Milwaukie, in the State of Wisconsin, now report:

That early in the session of the present Congress the attention of the committee was called to the necessity of a light-house at Milwaukie, by the Hon. John F. Potter, representative from that district, who also addressed a letter to the chairman of the committee on the subject, which is made a part of this report:

HOUSE OF REPRESENTATIVES U. S.,
February 28, 1860.

MY DEAR SIR: In reply to the verbal inquiries made by yourself of me, on yesterday, in relation to the necessity for a new light-house at or near the north cut of the harbor at Milwaukie, Wisconsin, I beg leave to say that there can be no doubt but that the necessity for an appropriation for that purpose is very great. The present light at that locality stands on the end of a pier which is only some six or seven feet above the level of the lake, is a beacon light only, and is entirely insufficient. It is, moreover, insecure, and liable at any time to be destroyed by the action of the severe storms to which it is exposed.

The pier upon which it is situated projects some five or six hundred feet into the lake, and there is no room whatever for a dwelling-house for the keeper, who is, therefore, obliged to live on the shore, from which the light cannot be seen.

In stormy weather the waves frequently break over the end of the pier several feet deep, thus rendering it impossible for the keeper to reach the light, or even to know if it is burning; and this, too, at the very time it is most necessary, thereby enhancing greatly the risk of life and property.

The estimate of the Light-house Board for the construction of a sufficient light at this point is but about forty thousand dollars.

When the importance of Milwaukie as a large commercial point, the rapidly increasing commerce of the lake, and the manifest impor-

tance of safe harbors of refuge on the lake coast, are considered, I do not doubt but that the committee will at once see the urgent necessity of immediate action.

I would, therefore, most respectfully, yet earnestly, request that the committee will make provision in the light-house bill for the immediate erection of a permanent and sufficient light-house at or near the point indicated.

I am, very respectfully, your obedient servant,

JNO. F. POTTER.

Hon. E. B. WASHBURNE,
Chairman of the Committee on Commerce,
House of Representatives U. S.

A copy of a letter from Captain R. Semmes to the Secretary of the Treasury is annexed to this report.

Personal interviews have been had by your committee with the officers of the Light-house Board, and with the other representatives from Wisconsin, and there is no doubt in their minds that a light-house as prayed for is much needed; and they recommend that the sum of fifty thousand dollars may be appropriated therefor.

TREASURY DEPARTMENT,
Office of Light-house Board, March 10, 1860.

SIR: I have had the honor to receive the letter of the Hon. C. H. Larrabee, of the House of Representatives, of the 8th instant, (together with a memorial of shippers, navigators, &c., of Milwaukie, Wisconsin,) addressed to you, asking for the erection of a new light-house at that place, and by you referred to this board for a report. Milwaukie is, as you are aware, a large and rapidly increasing commercial point; and its harbor is of great importance, not only to the regular commerce of the lakes, but as a place of refuge in stress of weather.

The present light is so low that it was found necessary to change its color to red, to prevent its being confounded with ships and other lights. This necessarily impaired its efficiency. Still, it would probably answer all necessary purposes if it were at all times accessible to the keeper, which is not the case. The light stands on the end of a pier projecting some two hundred feet into the lake. The pier is only six feet above the surface of the water, and in heavy gales the sea breaks over it waist deep, rendering it impossible for the keeper to pass to or from his light. There is not sufficient room on the end of the pier to admit of a dwelling for the keeper being placed there; and if there were, it would be too unsafe to require him to live in it.

From what has been said, it will be seen that it is precisely at those times when the light is most wanted, viz: in stormy weather, when vessels are running for shelter, that it is least to be depended upon. The only remedy which suggests itself is to construct a detached pier or block sufficiently large to receive a new light-house, with keeper's dwelling attached, which would probably cost about fifty thousand dollars, which the board respectfully recommends.

I would, beside, respectfully call your attention to the mode of construction here proposed as a suitable one to be adopted in all cases hereafter where new light-houses are required to be built upon piers.

It is highly objectionable to place light-houses upon the end of piers, public or private, constructed for harbor purposes, as the fact of placing them in such localities seems to commit the government more or less to the repair and renovation of the piers as light-house sites, which has the effect to complicate the Light-house establishment, more or less, by connecting it with river and harbor improvements.

The independent pier to be used as a site only, should, in my opinion, be adopted in all cases where practicable, to avoid the inconveniences I have mentioned.

I return the memorial, and Mr. Larrabee's letter.

Very respectfully,

R. SEMMES,
Secretary.

Hon. HOWELL COBB,
Secretary of the Treasury.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 328.

WILLIAM PALMER AND OTHERS.

[To accompany Bill H. R. No. 560.]

APRIL 2, 1860.

Mr. MORSE, from the Committee on Naval Affairs, made the following

REPORT.

The Committee on Naval Affairs, to whom was referred the petition of William Palmer and others, asking for the passage of a law confirming certain payments made to them by the United States, have had the same under consideration, and report:

That in the year 1835 the annual pay of clerks to yards and first clerks to commandants was established at $900 each. In 1853 the pay of clerks of yards and the first clerks to commandants at the Charlestown, New York, Norfolk, Washington, and Pensacola yards was raised to $1,200, leaving the pay of the same class of clerks at Kittery and Philadelphia at $900 each. The Navy Department, thinking the law raising the pay of first clerks to commandants and the clerks of yards applied to this class of officers in all the yards alike, estimated accordingly, and Congress appropriated for each at the rate of $1,200 per annum, and this sum was paid these clerks at the Kittery and Philadelphia yards for about one year, after which the Fourth Auditor refused to pay over $900 to the above-named clerks at the Kittery and Philadelphia yards, on the ground that the law raising the salaries of the same grade of clerks at other yards did not apply to them. The excess of payment was ordered to be charged to the clerks overpaid. Although your committee see no good reason why the pay of these clerks should not be made the same as that of clerks of the same grade in other yards, yet they will not now go further than to recommend that the usual sums overpaid them under appropriations made by Congress for that purpose be allowed.

In 1842 the annual pay of pursers' clerks at the Charlestown, New York, and Norfolk yards was fixed at $500, pursers' stewards doing the duty of clerks at other yards. The pay of purser's assistant at the Kittery yard was afterwards raised to $750; clerks of the same grade in other yards not being included, their compensation was left at $500 per annum. But the Navy Department, believing them to be included in the law, made their estimates for $750 for this class of clerks or pursers' assistants at Charlestown, New York, Philadelphia,

Norfolk, Washington, and Pensacola, as well as at Kittery, and this amount was appropriated by Congress for four years from July 1, 1854, and allowed by the accounting officers of the treasury, and paid to them for over three years. Some time during the year 1859 the Fourth Auditor of the Treasury discovered there was no authority of law to pay over $500 to pursers' clerks or assistants at any other yard than that at Kittery. He therefore brought the salaries of this class of clerks at all the other yards back to $500, and began to check on this small sum the amounts overpaid.

Your committee, believing the sum of $750 per annum a very moderate salary for the service performed, recommend the passage of a bill confirming and allowing the overpayments, and establishing the salaries of pursers' clerks or assistants to pursers in all the yards at $750 per annum.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 329.

CHAUNCEY A. HORR.

[To accompany Bill H. R. No. 563.]

APRIL 2, 1860.

Mr. REAGAN, from the Committee on Indian Affairs, made the following

REPORT.

The Committee on Indian Affairs, to whom was referred the memorial of Chauncey A. Horr, of Nebraska Territory, have considered the case maturely, and submit the following report:

This is a claim for compensation for a personal injury inflicted upon the memorialist by a party of Omaha Indians, on the Omaha reserve, in the Territory of Nebraska, in June, 1858. The memorialist asks that so much of the annuity which the United States have stipulated by treaty to pay to the Omahas shall be retained and sequestered for his benefit as shall satisfy his just claim for damages.

This committee, having carefully considered the testimony which was submitted by the memorialist to the Indian agents and superintendent for the district in which the Omahas live, are constrained to arrive at a different conclusion as to its force and bearing from that which was adopted by the officers who had the same under consideration.

The Bureau of Indian Affairs, however, having rejected the claim of the memorialist, upon the ground that there *was a want of jurisdiction at the bureau or its agency to award damages to any citizen for a personal injury inflicted by Indians,* it will devolve upon this committee to detail, in a brief space, the reasons for their conclusions in the case.

It appears that in June, 1858, Mr. Horr was living a few miles from the Omaha reserve, in Nebraska, and had lost a bay horse from his farm, which the mail-carrier informed him that he had seen within the lines of the Indian reservation. The memorialist informed the Indian agent of his loss, who then promised to have the Indians find and restore the horse to its owner; that in a day or two Mr. Horr returned, and learned from the agent that the animal had not been found. The agent suggested to memorialist that he should hunt for the animal on "a certain divide" between two creeks inside of the reserve, and Horr went to this locality accordingly, and there saw a bay horse standing in some timber. As he approached to ascertain

whether it was his horse, when he was some forty yards from the horse, three Indians suddenly stepped out from the bushes and fired their rifles at him in quick succession. Two of the balls took effect upon his person. He fled; the Indians pursued and tried to cut off his retreat, but he escaped, and was subsequently taken up by a settler and carried to his house, where surgical assistance was procured. One of the wounds he received was of such a character that it has entirely disabled his left arm, and subjected him to great pain. There is no prospect of his being restored to the use of the arm.

Mr. Horr is now in the meridian of life, and finds himself, by this casualty, a disabled man, incapable of maintaining himself by manual labor, on which he had relied for a livelihood.

But he did not resort to violence for revenge; on the contrary, he filed his complaint against the Omaha tribe before the agent, and made his affidavit to his belief that he had been shot by the Omaha Indians. The chiefs of the tribe, by council, filed a denial that the Indians who shot Mr. Horr were Omahas; so that the point between them made an issue *on the identity of the criminals as Omahas*. To render this question free of difficulty, the chiefs interposed with their denial affirmative matter, pointing *to another tribe for the guilty party*. They said the shooting was probably done by a band of Sioux Indians who were lurking about the Omaha reservation to steal. Now, it is plain this affirmative matter was to be proved by the party introducing it. The chiefs *did* show that the Sioux had stolen ponies from the reserve, and had driven them to their villages *in May* of that year; but this does not maintain the presumption that the Sioux were at the same place, at the same business, *in June*, or that they would shoot a white man in the centre of the reserve to prevent his interference with the property they had captured. The suggestion, inculpating the Sioux, is not maintained by proof, and therefore leaves the Omaha Indians with all the presumptions against their tribe. The offence was committed within three miles of one of the Omaha villages, and near the centre of their reserve. Their chief, Jos. La Flesche, speaking of the occurrence afterwards, said "the Indians in that village were mean enough to do such a deed with a fair opportunity." Had the testimony rested here, the committee suppose the preponderance of the evidence would have been against the Indians; but it does not rest here. George Ironsides testifies that, subsequently to the shooting of Horr, he was on the Omaha reserve, and the subject was introduced in a conversation between him and some Omaha Indians by the Indians thus:

"I was then asked if I had found Horr's horse. I told the Indians I did not care a damn for Horr or his horse. The same Indian then said 'if he got Horr he got two horses;' then he said something, making the sign of twenty times upon his fingers, pointing to the moon, and then making the sign as if shooting an arrow, by which, Charley told me, they meant, if they saw Horr upon the reserve within ten years, they would shoot him."

It cannot be doubted, on this testimony, the Indians manifested hostility to the memorialist. The interpretation of the declaration, "if he got Horr he got two horses," is, that had he succeeded in killing

Horr, he should have succeeded in obtaining the horse Horr was riding at the time, as well as the one he was hunting.

Another witness, Charles McNeany, testifies that he was with the Omahas on their hunt in 1859, and "during said hunt he heard one of them say that he shot at Horr last summer, and that he yet intended to kill him. This conversation was directed to the other Indians, and many other similar remarks were made by the same party. I have heard one other Indian speak of shooting at Judge Horr; I could identify both of them."

To evade the force of this evidence the Indians introduced Ray Harvey, a person in the employment of La Flesche, the Indian chief, to testify that Charley, the person who interpreted for Ironsides, is half-witted, and therefore that no credence should be given to his interpretation of what the Indians said to Ironsides; also, that *Charley told him* (the witness) that Horr had made improper proposals to induce him (Charley) to testify in the case. Thus with one breath he would destroy the force of what Charley interpreted, by proving his incapacity, and in the next he would speak from Charley's mouth to blacken the reputation of Judge Hoor. The signs of the Indians needed no interpreter, and Ironsides does not solely rely on the interpreter. He had a conversation with the Indians before the interpreter joined them, and the committee observe that the bearing of the Indians to the witness was hostile and insolent. The testimony of Ironsides stands unimpeached. The testimony of Ray Harvey is worth nothing, for his own declarations show that his character places him in a position in which he cannot be used to assail the testimony of others. The affirmative testimony which was introduced before the agency sustains the proposition of the memorialist, and fortifies the presumption, which would have possibly been sufficient without affirmative proof, that the perpetrators of the injury to Mr. Horr were Omaha Indians.

The rule of the Bureau of Indian Affairs excluded, however, the consideration of the personal injury to the memorialist as being beyond the jurisdiction of the Commissioner under the intercourse act of 1834.

This committee find no fault with the decision of the Commissioner on the point as to *his* jurisdiction; but the question presents itself very differently when the appeal of the citizen is made *to Congress*. It becomes a powerful government to be distinguished for its humanity to the weak and ignorant; but no government can be excused for failing to protect the lives and personal safety of its own people. The Indians have their rights; so have the citizens of the United States. It would be mistaken philanthropy that could lead the representatives of the power of the United States to close their ears against the complaints of a citizen who is stricken down in the prime of his life, and in the bosom of his country, by the arm of savage violence, lest the government should incur the censure of imposing on the weakness of an Indian tribe. It is absurd to educate the Indian to the idea that the government thinks more of horses and property than of the lives of the citizens of the country; yet such must be the practical effect of the existing rules of intercourse with the Indian tribes should Con-

gress determine that the citizen whose horse is stolen shall be compensated from the Indian annuity or the treasury, but that the citizen who is made, in his own person, a cripple for life is without redress.

The Indians understand the difference between good and bad behavior. They must be taught that while the one purchases kindness and good offices from the whites, the other brings the loss of the annuity primarily, and will ultimately lead to war.

It is a well-settled institute of the public law, that. for injuries done to the citizens of one State by the citizens or subjects of another, the government of the former may demand redress from the government of the latter; and in failure of satisfaction, may resort to reprisals, hostilities, and ultimately to war. Scarcely a year since the flotilla of the United States demanded and received from Paraguay ten thousand dollars as damages for the killing of a hand on an American steamer. The history of every country in Christendom may be appealed to for illustrations of this principle. The Indians are in some sort a foreign people; they make treaties with this government, contracts for land, retain titles in reserve, make demands and reclamations for injuries and losses, and, in a word, vindicate their claims to be considered independent by acts in which they are represented as nations, communities, or tribes. They must be held to corresponding responsibility.

The shooting of Judge Horr by Omahas was a breach of treaty obligation and an express pledge given by the Omahas as a tribe. It may be said the Omahas would surrender the criminals to be punished could they be detected. This would be some redress to the *government* of the United States—none to the *citizen* who has been injured. In this case the Omahas not only have made no redress, but they have denied the guilt of their people, though *a witness declared before the agent* he could identify the individuals who had confessed the shooting, and who threatened to shoot Mr. Horr again on the earliest opportunity, and though this witness was known as a companion of the Omahas on their last year's hunt.

Independently of a treaty, the duty of the United States to Judge Horr, as one of their citizens, is, to see that *he* obtains redress for the outrage committed on him without excuse; the duty they owe to the people generally is to teach the Omahas that such deeds will not pass unnoticed, or be permitted to go without an atonement for them.

The Omahas have an annuity of $30,000 per year, payable by the government for the next ten years. This fund is that from which the satisfaction should be drawn for the injury in this case; the process, a deduction, a sequestration in the nature of a reprisal to the amount of the damages the government believes its citizens to have sustained. The committee are unanimous in the opinion that the surest and best mode of preserving peace on the frontier with the Indians is to hold them to the performance of their duty, while this government treats them with justice and forbearance.

The committee ask leave to report by bill for the relief of the memorialist.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 330.

SUBLETTE CUT-OFF MASSACRE.

[To accompany Bill H. R. No. 127.]

APRIL 2, 1860.

Mr. SCOTT, from the Committee on Indian Affairs, made the following

REPORT.

The Committee on Indian Affairs, to whom was referred House bill (No. 127) for the relief of the survivors of the "Sublette Cut-off massacre," and for the payment of certain persons for expenses incurred by them in sending the destitute widows and orphans to their homes in the State of Missouri, having had the same under consideration, beg leave to make the following report:

From the testimony adduced, it appears that on the morning of the 24th of July, 1859, a party of emigrants from Howard county, Missouri, were on their way to California, and whilst passing through a cañon seven miles west of "Soda Spring," Utah Territory, they were attacked and unmercifully butchered by the Utah Indians. Men, women, and children shared the same fate. Their horses and mules were driven off, wagons plundered, their clothing, bedding, and provisions were all taken, &c.

Your committee would, therefore, report that the herein named parties be allowed the following amounts: To Anne B. Shepherd, widow of W. F. Shepherd, deceased, two thousand one hundred and fifty-two dollars; to Rebecca Wright, widow of J. D. Wright, deceased, one thousand two hundred and one dollars; to Marietta Shepherd, widow of T. F. Shepherd, deceased, two thousand two hundred and two dollars; to James R. Shepherd one thousand five hundred and sixty-one dollars; to William C. Diggs one hundred and forty-three dollars; to Claiborne Raines sixty-two dollars; to Pacific Mail Steamship Company four hundred and twelve dollars, and to Frederick Dodge six hundred and fourteen dollars and thirty-eight cents.

Your committee, therefore, report the accompanying bill.

The undersigned are willing to concur in reporting the bill, but they deem it proper to state that they do so because of the peculiar horrors and enormities which attended the massacre, and the pitiable and deplorable condition to which the survivors were reduced in con-

sequence of it. In consenting that this bill may be reported, they protest against it as a precedent, and are unwilling to be regarded as concurring in that which may be hereafter regarded as fixing the liability of the government for all depredations which may be committed by Indians upon persons and property.

EMERSON ETHERIDGE.
D. C. LEACH.
CYRUS ALDRICH.
THOMAS M. EDWARDS.

MINORITY REPORT.

Mr. REAGAN, from the minority of the Committee on Indian Affairs, submitted the following views:

The undersigned, a minority of the Committee on Indian Affairs, to whom was referred House Bill, No. 127, "*for the relief of the survivors of the Sublette Cut-off massacre,*" *begs leave to submit the following report and accompanying bill as a substitute for the bill reported by the majority of said committee:*

There is proof before the committee showing that a number of persons, on their way from the State of Missouri to the State of California, were attacked by the Utah Indians, and a portion of them killed, and all their property taken from them, and the survivors left in a most destitute and deplorable condition.

There is some proof as to the value of the property lost, and the proof may be as full as could be expected in such a case, where we must, from the necessities of the case, rely mainly on the testimony of interested parties for a knowledge of the value of the property lost.

We also have the statement of Frederick Dodge, Indian agent at Carson's Valley, Utah Territory, showing that O. F. D. Fairbanks was entitled to two hundred and fifty dollars for transportation and board of the survivors of this massacre from the scene of disaster to Carson's Valley, and that there was due himself, for bills paid by him for transportation, clothing, and board of said survivors, six hundred and fourteen dollars and thirty-eight cents; and that there is due the Pacific Mail Steamship Company, for passage of the widows and four children, (the survivors of this massacre,) from San Francisco to New York, four hundred and twelve dollars and fifty cents.

These three items are supported by the unsworn statement of Mr. Dodge, the Indian agent, and corroborated to a greater or less extent by the other facts in the case. And while I doubt the propriety of adopting a rule of allowing such claims on such proof, from the character of Mr. Dodge as a government official, and the corroboration of his statements by the other known facts of the case, I recommend the passage of the accompanying bill for the payment of these amounts.

There was no legal obligation on either of these parties to incur these expenditures. But the instincts of humanity required them to be incurred, and the persons voluntarily incurring them are entitled to our gratitude for their generous conduct, and should be promptly reimbursed for all necessary expenditures in relieving the unfortunate sufferers who survived this shocking massacre.

The remaining amounts provided for in the bill reported by the majority of the committee, amounting to seven thousand three hundred and twenty dollars and seventy cents, are for the reimbursement of

the survivors and heirs of those who sustained losses by the Indians by this massacre and robbery.

It is not an application under the Indian intercourse act, and involves the principle of reimbursing citizens for losses sustained by the act of a public enemy. Understanding that it is against the policy of the government to allow and pay such claims, I am induced to report against the allowance of these claims. I must at the same time say that no stronger case could probably be presented to Congress for the application of this principle, if relief is to be given in such cases. But if we allow this indemnity to persons who voluntarily risked their lives and property by attempting to cross the great plains, through the Indian country, it would be difficult to say why we should not indemnify our citizens who, remaining at their homes, are invaded and murdered and robbed by the Indians. And such cases are of almost daily occurrence in the States and Territories bordering on our Indian frontiers. If we give indemnity in one case, justice and common right requires that it should be given in all other similar cases. And if this rule is to be adopted, it becomes us to consider the amount of such claims for which the government would become liable, and how we are to obtain the money for their satisfaction.

JOHN H. REAGAN.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 331.

IN THE MATTER OF THE REFUSAL OF AUGUSTUS SCHELL TO PRODUCE A CERTAIN PAPER.

APRIL 6, 1860.—Ordered to be printed, and its further consideration postponed until Monday next.

Mr. COVODE, from the select committee, submitted the following

REPORT.

The select committee, of which Mr. John Covode is chairman, appointed under resolution of the House of Representatives of March 5, 1860, respectfully submit the following special report:

That, during the progress of their investigation, they have summoned as a witness Augustus Schell, collector of the port of New York, and that on the 28th ultimo, among others, the following questions were propounded to said Schell, and the following answers severally made to the same by him, to wit:

"Question. Were you connected with what was known as the New York Hotel fund prior to the election of 1856?

"Answer. I was a member of the committee which met at the New York Hotel?

"Question. Was there a fund created by the efforts of that committee?

"Answer. Yes, sir.

"Question Have you a list of the subscribers to that fund?

"Answer. I think I have it among my papers.

"Question. Will you furnish it to the committee?

"Answer. I will.

"Question. What amount was raised by subscription?

"Answer. I cannot recollect distinctly; some $30,000 or $40,000.

"Question. Where was that money expended, substantially?

"Answer. In different places. Part of it was sent to Pennsylvania, and part of it was expended in New York, both the city and State; at least, I suppose so; I did not expend it myself.

"Question. When will you furnish this subscription list to the committee? Can you send for it?

"Answer. I cannot well send for it. I can get it when I return home, and will send it on next week."

On the day following the witness again appeared before your committee, and asked leave to withdraw so much of his testimony given the day before as related to his furnishing your committee the list of subscribers to the New York Hotel fund, so called. He also submitted to your committee a written statement, which closed as follows:

"I am not certain that I have in my possession any list of the contributors of the moneys; but if I have such list, I must, on reflection, decline to produce it, feeling that such production, without the authority of the persons whose names may be connected with it, would involve a breach of the implied confidence recognized as existing in such cases."

On the 3d instant said Schell again appeared before your committee, when the following questions were propounded to him, and the following answers severally returned to the same, to wit:

"Question. The committee have given you abundance of time to reflect on this subject. They think they have the power to compel the production of that paper. What we want to know now is, whether you are going to furnish it or not.

"Answer. With all due respect to the committee, I have reflected upon it since the time of my former examination, and in my opinion the power was not given to the committee to ask for the production of a paper entirely private in its character.

"Question. The committee differ with you in opinion. They desire now to know whether you will or will not furnish that paper.

"Answer. I see no reason to change my opinion in reference to it.

"Question. You say, then, that you will not produce that paper?

"Answer. I decline to do so for the reasons I have stated, supposing it to be in my possession; I do not know even that it is, as I stated in my original examination.

"Question. You do not decline, as I understand you, to produce that paper because you were not summoned to bring it, but because of the alleged want of power in the House of Representatives to compel you to produce a private paper.

"Answer. I decline to produce it, because I think this committee have no power to order the production of it—if it is in my possession."

Your committee, regarding that paper as material to the proper investigation of the matters referred to them by this House, have concluded that it is the duty of your committee to insist upon the production of the paper by the witness, if within his possession or control. And your committee respectfully submit to this House that it is a contempt of the authority of this House on the part of the witness to refuse to answer to every material fact within his knowledge, and especially to refuse to produce a paper required by your committee. Believing that this House is clothed with power to order the party into custody, there to remain until released by the same authority, your committee recommend the adoption of the following resolution:

Resolved, That the Speaker issue his warrant, directed to the Sergeant-at-arms, commanding him (the said Sergeant-at-arms) to take into custody the body of the said Augustus Schell, and the same forthwith to bring before this House, at the bar thereof, to answer as for a contempt of the authority of this House in refusing to produce a paper when thereunto required by a committee of this House.

JOHN COVODE, *Chairman.*
A. B. OLIN.
CHAS. R. TRAIN.

MINORITY REPORT.

Mr. WINSLOW, from the select committee, submitted the following views:

The undersigned dissents from the views of the majority of the select committee.

The resolution of the House, the last in the series referred to this committee, it is true, is very large in its terms, and might seem, from a cursory examination, to impose upon the committee the very onerous duty of investigating every election held in each State of the confederacy, the money expended therein, the subscriptions made, and by whom, and for what purpose; whether such purpose and expenditure were corrupt, or otherwise.

But the undersigned submits, upon general reasoning, and upon the face of the paper, and consideration of the terms in which it concludes, that such is not the true construction, and hence not the intent of the House.

Without stopping to inquire into the propriety of attempting by law to prevent any interference with the elective franchise, by the use of money in printing, and distributing political tracts and documents; in supporting and establishing presses as vehicles for the communication of particular political opinions among the people, and of defraying the expenses of public meetings and assemblies, as practiced and pursued in every section of the country, without corrupt intent, an inquiry into which the undersigned does not choose to enter, it may well be questioned, in view of the general sentiment of the country, the peculiarity of our institutions, and the principle of free speech and a free press, whether such an attempt would be wise, proper, or expedient. Indeed, it may be doubted whether Congress has any right whatever to enact laws to punish bribery at elections in the States, or to suppress, by laws remedial or otherwise, any corrupt means or measures taken to influence them, and whether that power is not peculiarly and exclusively the legitimate duty of the several States, under the second section of the first article of the Constitution.

However this may be, still, granting it for the sake of the argument, the undersigned submits that this House has no authority to inquire into the private contributions of any person whatever towards such a purpose, unless it be first determined that such purpose was corrupt; and that such inquiry would be a wanton and improper interference with the just privileges of the citizen, subversive of the rights of the people, tending to an undue and dangerous concentration of power in the legislative branch of the government, to a derogation of

the dignity of the House, by converting it into an odious inquisition, and thus diminishing the public confidence in its action and character.

For what reason would this House institute such inquiry? Suppose the names of such subscribers reported to the House, what measures could the House be advised to take? Is it a crime to spend money, legitimately, to influence elections? What public statute would thereby be violated? Under what law could a person so accused be put to answer? And what jurisdiction has this House to institute investigations, unless in aid of legislation, which by the argument it has no authority to make, or with a view to impeachment?

That the House so thought is apparent from the order it gives, that the "names of the parties *implicated*" should be reported.

The resolution contemplates then a report only of those who have done a wrong act, that is a corrupt one, and does not authorize the report of any others. Augustus Schell was required to produce to the committee a list of the names of the persons subscribing to a fund which, it was alleged, was contributed towards defraying the expenses of an election in Pensylvania. He declined to produce it.

The undersigned submits that he was not bound to produce it until it was first determined that the subscribers had contemplated a corrupt use of the fund, or had corruptly expended it. Until then, conceding the authority of the House, for argument, neither he nor they had committed either a wrong or a crime, nor had done any act of which this House should or can take cognizance.

To compel the witness to answer would, then, be but for the gratification of an idle curiosity, which, in the case of the House, it is not decorous to suppose; or to elicit by illegitimate means a supposed legitimate result—a doctrine which the law of no free people could justify or admit.

And it indeed would, in the opinion of the undersigned, give much plausibility to the captious, who might charge the design and scope of the whole resolution to be, to do the very act and thing it seems to deprecate, and thus subject this house to an improper and unnecessary criticism of its motives.

The undersigned might well stop here, but the importance of the subject justifies a fuller discussion.

The House of Representatives is invested with high powers, but these powers are accurately defined, and strictly limited by the Constitution, which, while it protects the House in the exercise of its constitutional function, does not the less guard and secure the rights of individual citizens and of the States.

Hence it is obvious that inquiries by the House into the act of individual citizens in the States, if made at all, must be made of objects within its jurisdiction.

It may, in the *first* place, act on individual persons, private citizens, or others, in the maintenance of its own parliamentary prerogatives; *secondly*, it may inquire into facts in order to legislate thereon; and *thirdly*, it may investigate the conduct of public officers with a view to their impeachment before the Senate.

The particular fact as to which Augustus Schell has been called to

testify, and for not responding to which, it is proposed to arraign him, has no relation to the parliamentary prerogatives of the House. No evidence exists that the money contributed through him was employed to affect corruptly its official action; no question of the legality of the election of any of its members or officers is involved, nor indeed of *their* official conduct. Of course the inquiry proposed cannot be justified on that ground.

If it be conceded, for the argument's sake, that Congress has any power to legislate on this subject, and the assumed object of the inquiry be to assist the House in such legislation, then it is not at all material to that object to ascertain from Augustus Schell what persons contributed the money which he delivered to the Pennsylvania central committee. The fact who those subscribers are can hardly aid the committee in the preparation of a bill. It can have no possible effect in enlightening the House in the performance of any of its legislative functions, under the Constitution.

Again: if the object be to provide for the punishment of a public officer, then it must commence with suggestions of some breach of duty by such officer, and must proceed in those recognized forms which the law has sanctioned and adopted, consonant with the universal principles of justice and right. But Augustus Schell was no public officer, but a mere private citizen at the time of receiving this money; and further, it is not suggested that he received it from any public officer. And if he, or any one of the contributors had been a public officer, what law did he violate?

This House cannot impeach, except for acts made criminal by law, as the undersigned understands the law to be now well settled. And what provision of the Constitution, of any law, statute, or act of Congress, or even of usage or custom, is there to punish the act here inquired into, even if done by a public officer? None whatever; and if there were any such law, and the infringement of it were imputable to any public officer as cause of impeachment, he himself cannot be interrogated thereto.

No public officer of these States from the President to a village postmaster, can be required to furnish evidence whereby to be impeached.

Like all others, they are presumed to be innocent until proved guilty, and it is their undeniable right to stand upon this presumption. The House oversteps its power in calling upon a public officer to communicate to it self-accusatory matter, on which to found an impeachment before the Senate. But no public officer being concerned, and no unlawful act imputed to any public officer, in the premises, the proposed inquiry becomes an act of high-handed usurpation, and of odious violation of the personal rights of the citizen. The contributors are to be presumed to have acted from right motives—for lawful and honorable purpose. Nothing to the contrary of that has been proved or suggested.

If anything unlawful has been done by those individuals in Pennsylvania to whom the money was delivered, they, and they only, are responsible for the wrong, if any was committed. But neither they, if they unlawfully disbursed the money they received, nor still less

they who contributed the same, are amenable therefor to this House. This House is not a court, nor is it a public prosecutor. If these parties have committed a wrong, or an offence against the law of the land, they are to be tried by the law which acts with juries, and all those other safeguards which the Constitution assures to its meanest citizen.

In fine, the undersigned verily believes that except for the gratification of purposes of mere party spirit, thus to pursue those purposes is a procedure of invidious inquisition into the innocent conduct of private persons; and, cannot, in the end, be of any advantage to one party, nor injure the other. In this point of view, it would be wholly indifferent to the undersigned, if it were not in its nature, as he believes, discreditable to the House, to the institutions, and to the reputation of the people of the United States.

But he feels himself impelled to protest against, it by the higher consideration, that it involves flagrant usurpation on the part of the House, and violation of the rights and liberties of the people, and of the whole spirit of the Constitution.

For these reasons the undersigned is of opinion that the witness is not compellable to produce the list, nor answer questions as to its contents.

WARREN WINSLOW.

I concur in all of the above report except the construction of the resolution.

J. C. ROBINSON.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 332.

ADOLPHUS GLAEVECK.

APRIL 6, 1860.—Ordered to be printed.

Mr. WALTON, from the Committee on Claims, made the following

REPORT.

The Committee on Claims, to whom was referred the petition of Adolphus Glaeveck, have considered the same, and report:

That in 1851 seventy-seven animals, (horses, mares, and mules,) the property of the memorialist, were seized by a collector of the customs in Texas, "upon the pretext that they had been smuggled;" that upon a trial of the case in the district court, a verdict was rendered in favor of the memorialist; but that of the seventy-seven animals only sixty-four were returned to him, and these in a starved and emaciated condition, some seventeen of them dying shortly after being restored to him. The memorialist states on oath that his counsel applied to the Treasury Department for relief, and was offered $1,500, but that this sum was inadequate, and that he is justly entitled to $6,000.

In reply to a note, inquiring upon what data the Treasury Department had offered $1,500 to the claimant, the Secretary transmitted the following letter:

"TREASURY DEPARTMENT, *March* 27, 1860.

"SIR: In reply to your letter of the 24th ultimo, relative to the case of A. Glaeveck, now pending before the Committee on Claims, I have the honor to state that after a careful examination nothing can be found on the files or records of this department to show that the offer of fifteen hundred dollars was ever made, nor any proposition from the department to Mr. Glaeveck in relation to his alleged claim. The papers are herewith returned.

"I am, respectfully,

"HOWELL COBB,
"*Secretary of the Treasury.*

"Hon. E. P. WALTON,
"*Committee on Claims, House of Representatives.*"

Your committee find that on the judgment the court certified that there was probable cause for the seizure of the animals, and are of the opinion that for any damage occurring for want of ordinary care while in the custody of the officer the claimant had his legal remedy against the officer himself. He has mistaken his remedy, and in the opinion of the committee the prayer of the memorialist ought not to be granted.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 333.

SUSANNAH A. SAWYER.

APRIL 6, 1860.—Ordered to be printed.

Mr. TAPPAN, from the Committee on Claims, made the following

REPORT.

The Committee on Claims, to whom was referred the petition of Susannah A. Sawyer, praying "indemnity for the losses and sufferings of her father and uncle in the war of 1812,*" have had the same under consideration, and report:*

That the claimant presents no evidence of the truth of the allegations in her petition, nor, if proven, would the facts establish any claim against the United States. The services were such as every good citizen rendered, and the losses and sufferings those usually attendant upon a state of war. There is nothing stated by the petitioner which would lay the foundation of a claim upon the government under the principles long established by Congress. Your committee therefore report back the petition, and ask to be discharged from its further consideration.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 334.

SAMUEL H. TAYLOR.

[To accompany S. 100.]

APRIL 6, 1860.

Mr. TAPPAN, from the Committee on Claims, made the following

REPORT.

The Committee on Claims, to whom was referred Senate bill No. 100, *"for the relief of Samuel H. Taylor," have had the same under consideration, and beg leave to report:*

That the facts involved in the case are fully stated in the Senate's report, which your committee hereby adopt and approve. They would state that a similar bill was passed by the Senate at the last session of Congress, and was favorably reported on by this committee, but failed to be finally acted on by the House of Representatives. Satisfied that the claimant is entitled to the relief sought, they therefore report back the Senate bill without amendment, and recommend its passage.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 335.

WILLIAM HICKS.

APRIL 6, 1860.—Ordered to be printed.

Mr. HOARD, from the Committee on Claims, made the following

REPORT.

The Committee on Claims, to whom was referred the petition of William Hicks, praying for relief on account of services in ferretting out the incendiaries (Whites) who fired the Treasury buildings in 1833, *have had the same under consideration, and beg leave to report:*

The petitioner states that he attended as a witness at court at various times to the amount of one hundred and twenty-five days, for which he says he was paid one dollar and twenty-five cents per day, and five cents per mile for travelling. The petitioner further states that "he was paid by order of the Secretary for *actual expenses only* for ferretting out the incendiaries up to February 4, 1837. The five cents mileage and one dollar and twenty-five cents per diem as witness fees was paid by Marshal Hunter; all of which was quite inadequate for services and expenses rendered in this duty performed."

In a letter accompanying the petition, dated Peru, Illinois, December 5, 1859, the following language is used:

"As to myself, there was a powerful opposition arrayed against me as prosecuting witness, yet I believe my character for truth and veracity was fully sustained. With all my perseverance, fatigue, and risk, in order to bring to light the incendiaries of the Treasury buildings, *and then to be turned off with barely expense money for ferretting out so great a crime against the government, would not be very great inducement for others in future to expose crime against the United States.*"

The extract from the above letter is inserted for the purpose of showing that the language of the petition was intended to convey the idea that the petitioner had never been paid only his expenses for the time occupied in ferretting out the incendiaries. Your committee applied to the Treasury Department for such information as it possessed in relation to this claim, and the report from the Comptroller of that department shows the following facts:

The petitioner states that he attended the courts as a witness one hundred and twenty-five days, for which he was paid one dollar and twenty-five cents per day, and five cents per mile for travelling. The facts, as shown by the Comptroller's report, are, that he attended one hundred and eighty-nine days, for which he was paid one dollar and

twenty-five cents per day, and that he received mileage at five cents for two thousand and forty-six miles. In addition to this, however, he was paid for travelling expenses, as such witness, sixty dollars, July 29, 1836, and eighty-seven dollars, January 20, 1837. The petitioner further states that he was paid only for travelling expenses for ferretting out the Whites up to July, 1837. But the facts as shown by the said report are, that on the 4th of February, 1837, he was paid for one hundred and fifty-five days' services in aiding to arrest the Whites and procuring witnesses, at two dollars per day, and three hundred and ninety-five dollars for expenses, (the marshal having paid all expenses when they travelled together; which, as shown by the statement of the marshal, were two hundred and thirty-five dollars more, making, altogether, six hundred and thirty dollars allowed for one hundred and fifty-five days expenses,) besides two dollars per day for services.

The statement from the Treasury Department so fully disposes of the merits of this claim that your committee deem this a proper occasion to urge upon Congress the necessity of subjecting all claims of this nature to the test which has disposed of this one.

The committee report against the claim, and ask to be discharged from its further consideration.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 336.

COALE & BARR.

[To accompany Bill H. R. No. 576.]

APRIL 6, 1860.

Mr. MAYNARD, from the Committee on Claims, made the following

REPORT.

The Committee on Claims, to whom was referred the claim of Messrs. Coale & Barr, "asking that they may be paid for public printing," have had the same under consideration, and beg leave to report:

That the claimants were the publishers of the "Abingdon Virginian," and were appointed by the Department of State to publish the laws passed at the 1st session of the 32d Congress. They afterwards applied to Mr. Everett, then Secretary of State, for authority to continue the publication for the 2d session of the same Congress. The Hon. Allison White, through whom the application was made, says:

"I have to state that about the middle of the last session of Congress, (2d session 32d Congress,) according to your request, I called at the office of the Secretary of State to inquire if there would be any change in reference to the publication of the laws of the United States in the Virginia papers. Mr. Everett informed me that he contemplated no change, and that I might say to you to continue the publication, which I immediately did."

The petitioners, under this authority, proceeded to publish the laws of the 2d session of the 32d Congress, and on applying to the department for payment were informed that it did not appear from the books of the department that their paper "was one of those selected in which the publication of the laws of that session was authorized to be made."

The act approved August 8, 1846, provides "that the Secretary of State shall cause the publication of the laws of each session in two of the newspapers of the District of Columbia and in each of the several States and Territories, and no more;" and as it appeared from the records of the department that two other papers had been paid for publishing these same laws in the State of Virginia, the department properly declined paying the third. Nevertheless, the department certifies, under its official seal, "that the laws of the United States for the 2d session of the 32d Congress were published in the 'Abingdon Virginian,' as appears by a file of that paper in this department."

Mr. George S. Gideon, the publisher of the official organ, certifies "that the 'Republic,' in which were published the laws of the 2d session of the 32d Congress, was sent to the 'Abingdon Virginian' *by the direction of the Department of State.*"

Such were the circumstances under which the petitioners published the laws, and, as your committee are convinced, in entire good faith. The first instructions sent to Messrs. Coale & Barr stated "that your duties under this appointment may be performed with promptness and certainty, the publishers of the "Republic" will be requested to forward to you with utmost despatch and regularity that paper during the time in which the laws in question shall be published in it," &c. This was for the 1st session of the 32d Congress. Mr. Everett authorized Mr. White, then a member of Congress, to direct Messrs. Coale & Barr to continue to publish the laws for the 2d session, and Mr. Gideon says he was directed by the department to continue to send them the "Republic," from which to copy. That the work was faithfully performed the department certifies. The only question, then, which presents itself is, should the petitioners be paid for the publication? Your committee think they had reasonable grounds for supposing the "Virginian" had been again selected for publishing the laws, and believe they should be paid the same amount paid the other papers for this work, and they accordingly report the accompanying bill, and recommend its passage.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 337.

MILES DEVINE.

[To accompany Bill S. No. 99.]

APRIL 6, 1860.—Ordered to be printed.

Mr. MAYNARD, from the Committee on Claims, made the following

REPORT.

The Committee on Claims, to whom was referred Senate bill No. 99, "for the relief of Miles Devine," have had the same under consideration, and beg leave to report:

That the petitioner was a day laborer in the employment of the United States, and was engaged on the repairs of Fort Scammel, in Portland harbor. While employed in making an excavation a bank of earth suddenly fell and buried him to the depth of several feet, injuring him, and rendering him a cripple for life.

At the 1st session of the 34th Congress, Devine petitioned for a pension, upon which Mr. Clay, of the Senate, made the following report:

"That petitioner prays a pension for injuries received while employed as a day laborer on a United States fort. The laws granting pensions do not recognize any claims of this character; and there are few, if any, precedents in the special legislation of the country which sanction such a claim. It is an absolute condition of the pension system of the country that the recipient of its benefits shall have been regularly received into the military or naval service, and shall be disabled in consequence of wounds received, or diseases incurred, while in such service, and in the line of duty. To depart from this condition would be to open the door for a class of claims having no foundation in justice, or limitation by law. Your committee must, therefore, withhold their sanction from all claims for pensions of persons disabled while employed upon civil contracts for the government, except where peculiar and extraordinary circumstances may render it expedient to depart from this rule. They recommend that the prayer of the petitioner be denied."

The petition was again renewed before the Senate at the 1st session 35th Congress, when Mr. Simmons made a favorable report, in which he says:

"While the committee concur fully in this wise policy of the gov-

ernment in regard to the granting of pensions, they think that cases may arise in which, in the exercise of a wise and humane discretion, Congress may properly interpose to relieve the necessities of persons in civil life who become disabled from providing for their own support by accidents incurred in the faithful service of the country. This case is nearly identical with that of Peter Grover, for whose relief an act was passed at the last session of Congress. The principle laid down in that case is the following:

"Where a skilful and industrious mechanic or laborer is employed by the government in a *necessary but dangerous service*, and, without any fault or negligence, receives, in the performance of his duty, an injury which permanently disables him from providing for those dependent upon his skill and labor for support, it would alike become the government or an individual employer to manifest their sympathy 'in the only way calculated to carry conviction of its sincerity,' by extending some measure of material aid and bounty. Such a case, it is believed, is presented by the petitioner."

The claim of Peter Grover, here referred to, appears to have passed this committee without a report in writing, and it is presumed without much consideration. Nor is it necessary here to express an opinion as to the correctness of the principles laid down in that case by the Senate, as your committee can perceive no application of them to the case under consideration. The rules which might properly govern in the employment of a "skilful mechanic in a dangerous service," can hardly be construed to apply to a "day laborer digging in an embankment of earth."

Your committee concur fully in the opinion of Mr. Clay, that to depart from the well established and uniform policy of the government, respecting the granting of pensions and gratuities, "would be to open the door for a class of claims having no foundation in justice, or limitation by law."

A similar bill to that now before your committee passed the Senate at the last session of Congress, was referred to them, and the chairman was directed to make the following report:

Mr. S. S. MARSHALL, from the Committee on Claims, made the following report:

The Committee on Claims, to whom was referred Senate bill No. 288, *for the relief of Miles Devine, have had the same under consideration, and beg leave to report:*

That the claimant was a laborer, employed by the government in the repairs of Fort Scammel, in Portland harbor, and while thus employed was buried beneath an embankment of earth, which suddenly fell upon him, seriously injuring him, and making him a cripple for life. In consideration of this injury, received while in the employment of the government, the bill proposes giving the memorialist a gratuity or pension. Your committee can perceive no good reason why this case should be made an exception to the hundreds of similar

cases constantly occurring among the civil employés of the government. If it be desirable that the government should indemnify against accident or injury, a general law should be passed which would operate equally. They therefore report back the bill, with a recommend that it do not pass.

Believing in the correctness of the view taken in the above report, your committee report back the Senate bill, and recommend that it do *not* pass.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 338.

WILLIAM Y. STRONG.

[To accompany Bill H. R. No. 578.]

APRIL 6, 1860.

Mr. TRIMBLE, from the Committee on Public Lands, made the following

REPORT.

The Committee on Public Lands, to whom was referred the petition of William Y. Strong, make the following report:

It appears from the petition and accompanying papers that William Y. Strong entered, at the United States land office at Chilicothe, Ohio, on the 27th of June, 1845, the southeast one-fourth of northwest one-fourth of section 24, township 13, range 1 east, containing 40 acres, at $1 25 per acre, for which a patent was issued July 12, 1855.

It further appears that prior to May, 1836, the State of Ohio sold the same land to another party, and by her governor made conveyance of the same under act of Congress, May 24, 1828, granting lands to the State for canal purposes. No transfer had been made of this tract of land from the general government to the State of Ohio on the books of the land office at Chilicothe, and consequently no evidence existed in the land office at Washington that the State had approved the land for canal purposes.

The petitioner, therefore, made his entry and paid his money in good faith, and as the Commissioner of the General Land Office decided that the United States was the owner of said land and the patent to petitioner conveyed the title to the same, he was compelled to resort to the courts of Ohio for possession. After several years' litigation, the supreme court of the State decided, in March last, that the holder under the State had a good and valid title.

In consideration of the fact that the petitioner has spent both time and money in testing the title of the government to this land, the committee recommend for his relief the accompanying bill.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 339.

THOMAS F. BOWLER.

[To accompany Bill H. R. No. 579.]

APRIL 6, 1860.

Mr. G. ADAMS, from the Committee on Post Offices and Post Roads, made the following

REPORT.

The Committee on Post Offices and Post Roads, to whom was referred the petition of Thomas F. Bowler, of New Mexico, make the following report:

That on the 21st day of May, 1858, the petitioner entered into a contract with the Post Office Department to transport the mails from Neosha, in the State of Missouri, to Albuquerque, New Mexico, at the sum of $17,000 per annum, for the period of four years; service to commence on the 1st day of October or the 1st day of November thereafter.—(See copy of contract and letter of the department of May 21, 1858.)

Petitioner commenced the service on the 15th October, 1858, and continued to transport the mails with fidelity and promptness until the 15th August, 1859.

On the 17th May, 1859, the Post Office Department, by letter to petitioner, notified him that his "contract would be annulled on the 1st of July, 1859," giving as the only reason for so doing the failure of Congress to appropriate the means necessary to carry on the mail service.—(See letter of that date.)

On the 20th June, 1859, petitioner, having received the aforementioned notice from the department, informed the Postmaster General, by a letter of that date, that he was anxious and willing to comply with his contract with the government, and rely upon Congress to get his pay, and also denying the right of the Postmaster General to annul it.—(See letter of that date.)

On the 7th July, 1859, the Postmaster General, by letter, informed Mr. Bowler that his contract had been annulled; that in consequence of the failure of Congress to make appropriations for the mail service there was no money on hand, and he had taken immediate steps to reduce the expenses, and had selected Bowler's route for discontinuance. He stated, moreover, that he supposed Congress would indemnify him for all loss or damage he might sustain in consequence of the action of Congress in failing to make the appropriation.—(See letter of that date.)

The petitioner claims that he has sustained damages and losses to the extent of $61,879 in consequence of the annulment of his contract aforesaid, and asks Congress to grant him relief.—(See account filed.) The account embraces a variety of items, some of which your committee are of opinion should be allowed and others rejected. For instance, in the account filed he charges the sum of $21,200, the value of pre-emption rights to 640 acres of land every twenty miles, as per his contract. Of this matter we will speak hereafter. We also deduct as charged in the account the sum of $5,392 interest upon the sum of $44,110 as per account, and also the sum of $1,700 for services to Watts, and $1,080 for guns and pistols charged. The account, therefore, after making the deductions which we think just and proper, will stand thus:

Whole amount claimed		$81,807 00
Deduct:		
Mules remaining, after the deduction of 29 lost out of the 73	$4,400 00	
By amount received from the Post Office Department	13,772 67	
By the value of coaches	503 00	
Two wagons	165 00	
Six sets of harness	300 00	
Outfit remaining	200 00	
Buggy and harness	250 00	
Value of pre-emption rights	21,200 00	
Interest charged in account	5,392 00	
Services to Watts charged	1,700 00	
Amount charged for guns and pistols	1,080 00	
		48,962 67
Balance due		32,844 33

For the correctness of the items above allowed, see affidavits and proof on file.

Under the whole state of the case presented to the committee, they are of opinion that the petitioner is entitled to relief. He has shown a willingness to comply with his contract in every particular; commenced and carried it on in good faith and fidelity until the annulment, and was suddenly placed in a position by the action of the Postmaster General which will result in his entire ruin unless indemnified by the government. From the proof on file to which we make reference we allow him the sum of $32,844 33, which we believe will not prove adequate to his damages and loss, and recommend its payment.

We also recommend that the petitioner be granted his pre-emption rights under his contract to the 640 acres land, believing, as we do, that under the proper construction of the law he is entitled to the same whenever he is *engaged* in carrying the mails under a contract with the government, (see section 53 of act of 1855,) and offer bills to afford him appropriate relief.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 340.

JOHN MONTY.

[To accompany Bill H. R. No. 580.]

APRIL 6, 1860.

Mr. BRIGGS, from the Committee on Revolutionary Claims, made the following

REPORT.

The Committee on Revolutionary Claims, to whom was referred the petition of John Monty, report:

That this claim was favorably reported on the 24th day of January, 1857; that report with the evidence has been re-examined, and your committee concurring entirely with that report adopt it, and report a bill similar in all respects to the one then reported.

IN THE HOUSE OF REPRESENTATIVES, *January* 24, 1857.

Mr. K. MILLER, from the Committee on Revolutionary Pensions, made the following report:

The Committee on Revolutionary Pensions, to whom was referred the petition of John Monty, praying to be paid his bounty money, gratuity, and land, report:

That the petitioner, under oath, declares that he served as a warsman in General Hazen's regiment, or Congress regiment; that he never received his bounty money, or the gratuity of eighty dollars, promised by resolution of Congress to those soldiers who enlisted and served to the end of the war, and that he is a United States pensioner. In the supplementary petition he states that the land granted to him under the acts of Congress of March 3, 1855, and amended by act of May 14, 1856, is withheld by the Commissioner of Pensions. The petitioner relies on the records and evidence on file in the Pension office to substantiate his claim; and they are furnished, through a communication from the Commissioner of Pensions, in answer to information called for by your committee. He states that "no soldier by the name of John Monty, of Hazen's regiment, received his bounty money and the $80 reward promised by resolution of Congress of May

15, 1778," neither did any "soldier by the name of John Monty" receive "his bounty land for services in the revolutionary war;" that a soldier named "*Jacque* Monty served to the close of the war in Hazen's regiment, and received the gratuity of $80 and one hundred acres of land as such warsman; that in the printed copy of the return of warsman, made by the board of war in the land registry, and in our transcript of the rolls of Hazen's regiment, the name is spelled *Jacque*, in another transcript it is spelled *Jack*;" that "Hazen's regiment was made up mostly of Canadian refugees, and Monty was, in all probability, a Canadian Frenchman; that the French language, as spoken in Canada, is a great deal corrupted, and there seems to be no reason to doubt that the word *Jacque* is a contraction for the French word *Jaques*, which answers to the English *James*, and written as pronounced; that John Monty applied for and obtained a pension under the act of March 18, 1818, and his pension has been continued to him under the act of 1820;" that "this pension was granted for the same service performed by Jacque Monty in Hazen's regiment;" that "it is understood that the roll bearing the name spelled *Jack* was the one referred to in allowing claims under the act of 1818;" that "it would require very clear and strict proof to establish the fact, to the satisfaction of this office, that the name *Jaques* had been transformed into the English *John* through the several mutations of *Jacque* and *Jack*, although such may have been the fact;" and that "the application of John Monty for bounty land under the act of March 3, 1855, has been suspended solely upon the grounds herein stated."

It is further proved by the petitioner that his father, Francis Monty, was a lieutenant in the Canadian regiment, (see American State Papers, "Claims," page 94,) until six of his sons were enrolled as soldiers, viz: Francis Monty, jr., James Monty, Joseph Monty, Placide Monty, Amable or Abraham Monty, and John Monty, all of whom were pensioned under the act of 1818.—(See pension lists of New York, county of Clinton.) The said James or Jaques was pensioned under the said act of 1818, and died July 9, 1819. And the said John or Jack was pensioned under the same act, and the only survivor of a family of nine children and one hundred and ten descendants. It is unnecessary that your committee should animadvert further on the testimony in the case before them. From the showing of the Pension office, John or Jack Monty never did receive the bounty, gratuity and land he was clearly entitled to; and if Jacques or James did, (of which there can be no doubt,) your committee cannot see any good reason why the prayer of the petitioner should not be granted, and the resolution of Congress passed at the second session of the second Congress extended to him, which resolution is in the following words:

"*Resolved*, That provision ought to be made by law for donations of land to the Canadian and Nova Scotia refugees, in conformity with the resolutions of Congress of the 23d of April, 1783, promising the same."

And they report a bill accordingly.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 341.

JAMES BELL—LEGAL REPRESENTATIVES OF.

[To accompany Bill H. R. No. 581.]

APRIL 6, 1860.

Mr. VANCE, from the Committee on Revolutionary Claims, made the following

REPORT.

The Committee on Revolutionary Claims, to whom was referred the memorial of Ralph Richardson, of Newark, New Jersey, executor, &c., report:

They have examined carefully all the evidence submitted in this case, together with various reports of former committees in both houses of Congress, and are fully satisfied that James Bell, late of Chambly, in the province of Lower Canada, did furnish supplies and render services, as claimed, to the American army under Generals Arnold and Montgomery during the invasion of Canada. Your committee deem it entirely unnecessary to embody in this report all the evidence in the case, or the substance of the various reports; but are content to state that on the 30th of June, 1834, Congress passed "An act for the relief of James Bell," directing the accounting officers of the treasury to "settle the accounts of said Bell on equitable principles for moneys advanced," &c., with a proviso that the sum reported should not be allowed to exceed $5,727 03, and disallowing interest. In obedience to this act, the officers of the treasury did settle the accounts of claimant, and found actually due him, from sufficient vouchers, the sum of $6,056 34, which was reported to Congress. But as the proviso referred to prohibited the payment of more than $5,727 03, the whole amount actually found due was of course never paid. Not deeming it proper to go behind this settlement at the Treasury Department, and deeming it nothing but justice that the claimants should receive the whole amount acknowledged to be due them, your committee report the following bill for the balance of the principal with intrest from June 30, 1834, that being the date at which the account was audited and found due.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 342.

LEGAL REPRESENTATIVES OF LIEUTENANT FRANCIS WARE.

[To accompany Bill H. R. No. 582.]

APRIL 6, 1860.

Mr. FERRY, from the Committee on Revolutionary Claims, made the following

REPORT.

The Committee on Revolutionary Claims, to whom was referred the petition of the legal representatives of Francis Ware, asking payment for a final settlement certificate which has been lost or destroyed, report:

That the case was examined at the 1st session of the 29th Congress by the Committee on Revolutionary Claims, and a report made thereon favorably, with a bill for the relief of the petitioner. That report the committee adopt, and ask that it may be considered and taken as a part of this. Said bill is again reported for the relief of the petitioner.

The Committee on Revolutionary Claims, to whom was referred the petition of the legal representatives of Francis Ware, asking payment for a final settlement certificate which has been lost or destroyed, report:

That they have examined the same, and herewith submit the certificate of Michael Nourse, Acting Register of the Treasury, in relation to this claim, and make it a part of this report.

TREASURY DEPARTMENT,
Register's Office, September 22, 1845.

It appears from the record of final settlement certificates, issued for pay of commutation by the commissioner on the revolutionary army accounts, that certificates were issued in favor of Francis Ware for $1,868$\frac{65}{90}$; one of which (No. 92816) for 251\frac{10}{90}$, appears to be outstanding and unpaid.

MICHAEL NOURSE,
Acting Register.

From the above certificate, the committee are of the opinion it is satisfactorily shown that the certificate is outstanding and unpaid, and believe the petitioner is entitled to the payment of said certificate, with interest thereon; and, in conformity with the requirement of a precautionary bond of indemnity in such cases, report a bill providing for the payment of the said certificate, with interest thereon.

IN THE UNITED STATES COURT OF CLAIMS.

DISTRICT OF COLUMBIA, *Washington County:*

To the honorable the judges of the Court of Claims:

The petition of the heirs of Lieutenant Francis Ware, late of the army of the American revolution, would with respect represent to your honors, that in the year 1791, on a final settlement of accounts between the said Lieutenant Ware and the government of the United States, the said government fell in debt to the said Lieutenat Ware for pay of commutation in the sum of $1,868$\frac{65}{90}$ and that certificates were issued to the said Lieutenant Ware for the said amount of indebtedness, one certificate, No. 92816, for 251\frac{10}{90}$, being still outstanding and unpaid, the sum being now due and payable your petitioners.

Petitioners would represent that on the 17th day of December, 1845, they memorialized the Congress of the United States for relief, and their memorial was referred to the Committee on Revolutionary Claims in the House of Representatives. On the 5th day of March, 1846, a bill was reported for their relief, but no final action had thereon. On the 22d day of December, 1847, their memorial was again referred to the same committee, and on the 8th February, 1848, the committee made the following report, accompanied by bill 186, for their relief:

FEBRUARY 8, 1848.—Mr. MORRIS, from the Committee on Revolutionary Claims, made the following report:

The Committee on Revolutionary Claims, to whom was referred the petition of the legal representatives of Francis Ware, asking payment for a final settlement certificate which has been lost or destroyed, report:

That the case was examined at the first session of the 29th Congress by the Committee on Revolutionary Claims, and a report made thereon favorably, with a bill for the relief of the petitioner. That report the committee adopt, and ask that it may be considered and taken as a part of this. Said bill is again reported for the relief of the petitioner.

The Committee on Revolutionary Claims, to whom was referred the petition of the legal representatives of Francis Ware, asking payment for a final settlement certificate which has been lost or destroyed, report:

That they have examined the same, and herewith submit the certificate of Michael Nourse, Acting Register of the Treasury, in relation to this claim, and make it a part of this report:

TREASURY DEPARTMENT,
Register's Office, September 22, 1845.

It appears from the record of final settlement certificates, issued for pay of commutation by the commissioner on the revolutionary army accounts, that certificates were issued in favor of Francis Ware for $1,868$\frac{65}{90}$; one of which, (No. 92816,) for 251\frac{19}{90}$, appear to be outstanding and unpaid.

MICHAEL NOURSE, *Acting Register.*

From the above certificate, the committee are of the opinion it is satisfactorily shown that the certificate is outstanding and unpaid, and believe the petitioner is entitled to the payment of said certificate, with interest thereon; and, in conformity with the requirement of a precautionary bond of indemnity in such cases, report a bill providing for the payment of the said certificate, with interest thereon.

IN THE HOUSE OF REPRESENTATIVES, *February* 8, 1848.

Read twice, and committed to a Committee of the Whole House to-morrow.

Mr. MORRIS, from the Committee on Revolutionary Claims, reported the following bill:

A BILL for the relief of the legal representatives of Lieutenant Francis Ware.

Whereas it appears from the books in the Register's office of the Treasury Department that there is now outstanding and unpaid in favor Lieutenant Francis Ware, deceased, a final settlement certificate for commutation pay for the sum of two hundred and fifty-one dollars and ten cents, number ninety-two thousand eight hundred and sixteen: Therefore—

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That immediately after the *ratification* of this act the Secretary of the Treasury shall cause to be published for the space of two weeks, in two of the weekly papers of the city of Washington, a notice that he has been directed to pay said "final settlement certificate," and calling upon any person or persons, who may own said certificate, to produce it to him for payment; and if, at the expiration of three months from the date of said notice, no

person or persons shall present it for payment, it shall be the duty of the Secretary of the Treasury, out of any money in the treasury not otherwise appropriated, to pay the amount of said certificate number ninety-two thousand eight hundred and sixteen, with interest on the same, at the rate of three per centum, from January 1, 1791 to January 1, 1832, to the heir or heirs-at-law of said Lieutenant Francis Ware: *Provided, however,* That, before such payment shall be made, the said heir or heirs, as the case shall be, shall execute a bond payable to the United States, in double the amount to be paid, with two good and sufficient securities, conditioned to indemnify the government of the United States against the legal claim of any person or persons for the payment of said "final settlement certificate for commutation pay" alleged to be lost or destroyed.

This bill, however, failed to become a law for the want of final action thereon, and on the 11th March, 1850, the memorial was again referred to the same committee; which committee, on the 23d day of June, 1854, reported again the same bill reported on the 8th day of February, 1848; which bill passed the House of Representatives, and in the Senate was amended by substituting the word *approval* for that of *ratification* in the third line of the bill, and before this clerical correction or amendment could be agreed to in the House of Representatives the session of Congress closed and the bill again failed to become a law, and was referred by a resolution of the House to your honorable court.

Your petitioners pray that after due consideration of the facts herein alleged, your honors will report a bill for their relief, appropriating the sum necessary to pay off this outstanding certificate of indebtedness which has been lost or destroyed and cannot now be produced before the court, with legal interest thereon from the 1st day of January, 1791, till paid; and, as in duty bound, your petitioners will ever pray, &c.

ALEX. RAY,
Attorney for the heirs.

DISTRICT OF COLUMBIA, *Washington County:*

Personally appeared before the undersigned authority, a justice of the peace in and for said district and county, Alexander Ray, who, after being duly sworn, makes oath and says that the facts set forth in the foregoing petition are true, to the best of his knowledge and belief.

Subscribed and sworn to this —— day of ——, 1855.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 343.

JEAN A. B. DAUTERIVE.

[To accompany Bill H. R. No. 583.]

APRIL 6, 1860.

Mr. NOELL, from the Committee on Private Land Claims, made the following

REPORT.

The Committee on Private Land Claims, to whom was referred the memorial of the heirs of J. A. Bernard Dauterive, praying for the confirmation of a land claim in Louisiana, called the Bayagon las Concession, would report:

On the 6th of February, 1835, Congress passed "an act for the final adjudication of claims to lands in the State of Louisiana," (4 Stat. at Large, 749,) by which persons having claims to lands in Louisiana were authorized to present their claims and evidence to the register and receiver of the land office in which the land may lie, and it was made the duty of these officers to make a report on these claims, accompanied by their opinion of the validity of such claim, which was to be laid before Congress.

Under this law the heirs of J. A. Bernard Dauterive filed with the register and receiver of New Orleans a claim for the confirmation of their title to a tract of land in Louisiana. This claim is embraced in the report of the register and receiver of November 22, 1837, which was communicated to the Senate by the Secretary of the Treasury on the 14th of February, 1838, and the report on this claim is in the following words:

"The heirs of Bernard Dauterive claim the confirmation of their title to a tract of land in the parish of Iberville, on the west bank of the Mississippi, having forty-four arpens front, and running back to the Atchafalaya, with the exception of so much thereof as has been confirmed to other persons, or has been sold by the United States, for which they intend to claim compensation from the United States.

"The part of this tract is designated on the returned township plats of township No. 10, range 13 E., as lots 34 to 47 inclusive, but this part (front) is not claimed, but only what still remains unconfirmed or unsold behind the said front tract and between their side lines and the Atchafalaya.

"The above-described tract is a portion of the grant made in 1718 by the Western Company to Paris Duvernay, settled for him in 1719 by Dubuisson and sixty other men, and sold in 1765 by Claude Tremonay de Chamfret, the agent of the said Paris Duvernay, to the said Bernard Dauterive. The portion now claimed is so much of the said original grant as was confirmed to the said Bernard Dauterive by the Spanish governors, O'Reilly and Unzaga; and this claim is made without prejudice to the rights of the claimants to other lands under the said original grant by the Western Company.

"We are, therefore, of opinion that this claim ought to be confirmed."

The report on this claim never was acted upon by Congress. The memorialists now petition Congress for a final decision upon this report, and declare that they now confine their claim to so much of their original French grant as was confirmed by the Spanish government; and that for so much of the land embraced in the claim to which other parties have acquired titles from the United States they may receive certificates of re-location, to be located upon any public lands of the United States subject to private entry.

On the 17th of June, 1844, Congress passed an act, permitting claimants to land in Louisiana and elsewhere to sue the United States for the confirmation of their titles in the federal courts. The memorialists, believing that their claim was embraced in the provisions of that act, and not having as yet received from Congress a final decision upon the report of the register and receiver of November 22, 1837, brought suit against the United States in the district court of the United States at New Orleans.

That court took jurisdiction of the case, and decided it in their favor. But on appeal to the Supreme Court of the United States, and at the December term thereof, 1853, this decision was reversed, mainly on the ground that the district court had no jurisdiction of the case under the law upon which it proceeded.—(See United States *vs.* Dauterive *et al.*, 15 How., 14.) The district court having heard all the evidence in the case, and having found all the facts from that evidence, they will here be stated as there found, as follows:

"And the court having maturely considered the same, and being satisfied from the evidence that in or about the latter part of the year 1717, or the beginning of the year 1718, 'The Western Company,' a corporation created by letters patent issued by the King of France, to which all the lands, coasts, ports, havens, and islands of the three French provinces of Louisiana were given, granted, and conceded in full property, seigniory, and jurisdiction, with authority to sell or give away the said land granted to it, did, with a view to promote the settlement of the said province of Louisiana, grant to Paris Duvernay, a man of great means and influence, a tract of land fronting on the western bank of the Mississippi river, opposite Bayou Manchac, having four leagues front on the Mississippi, and extending in the rear and back to the Atchafalaya river; that early in the year 1718 the said tract of land was settled by a considerable number of persons sent out from France by the said Duvernay, under the directions of one Dubuisson; that very extensive improvements were made upon

the said land, and that the same was occupied, and considerable portions thereof cultivated, from that time until in or about the year 1765, when the agent of the said Duvernay sold the same to Jean Antoine Bernard Dauterive, the ancestor of the present plaintiffs; that the said Dauterive took possession of the same, known as the 'Bayou Gaoula Concession,' and cultivated considerable portions of the front, and made thereon a road, beginning on the Mississippi river, at or near the lower line, and extending to the Atchafalaya, which was known as the Portage Dauterive, and that he continued to occupy the same until his death, in the year 1776.

"And being further satisfied that after the transfer of the said province of Louisiana by France to Spain, under the treaty made between the two governments on the 3d of November, 1762, Don Luis Andry, surveyor general of the said province of Louisiana, acting under the authority of Don Luis de Unzagay Amezaga, governor of the said province under the government of Spain, did, on the 12th day of March, 1772, make a survey of a portion of the said tract comprised in the aforesaid grant acquired by the said Jean Antoine Bernard Dauterive from Duvernay, having forty-four arpens front, on the right bank of the Mississippi river, with the side lines opening and extending to the Atchafalaya, as is represented and described in the plot and process-verbal of said survey on file, and marked 'B No. 21;' and that on the 12th day of July, 1772, the said Unzaga, governor of said province aforesaid, did approve the said survey conformably to the plan and process-verbal of survey of the said Andry, surveyor as aforesaid, with the depth to the Atchafalaya, as shown by the letter of the said Unzaga, attached to the said survey, and marked 'B No. 22,' and that the same was a recognition and confirmation of the title of the said Jean Antoine Bernard Dauterive, who was then a resident of the said province of Louisiana, to the land represented and described in the said plat and process-verbal of survey, with the depth between the side lines to the Atchafalaya river, or a grant anew of the same by the said governor, having full power and authority to grant the same; and that a portion of said tract fronting on the Mississippi river, to the depth of forty arpens from said river, and no more, was disposed of to the Spanish government (or otherwise) by the heirs after the death of the said Dauterive.

"And being further satisfied that the petitioners are the heirs and legal representatives of the said Jean Antoine Bernard Dauterive, and being satisfied that the said grants were and are good and valid grants from the French and Spanish governments, and that more especially the said grant from the Spanish government was and is a good and valid grant, and that it is protected by the treaty made between the United States and the French republic on the 30th of April, 1803, as well as by the laws of nations and the Constitution and laws of the United States, and might have been perfected into a complete grant under and in conformity to the laws, usages, and customs of the government under which the same originated, had not the sovereignty of the country been transferred to the United States."

These are the material facts in the case, as found by the district court, and thereupon the court gave judgment for the land claimed,

with the depth to the Atchafalaya. There are other facts shown by the evidence which are deemed very important.

By the treaty of 1762 France agreed to transfer Louisiana to Spain, but the latter power did not take possession of the colony until 1769, when O'Reilly was sent out with troops to introduce the Spanish rule and put down a rebellion. He treated the inhabitants very harshly, had a number of them tried and executed, and exiled others, and, using his uncontrolled power as he saw fit, among other high-handed acts, ordered the large grant of Paris Duvernay, of which Dauterive was then the proprietor, to be reduced to twenty arpens front. O'Reilly was soon replaced by Unzaga as governor, who, on the petition of Dauterive, consented to leave him in possession of forty arpens front of his original property instead of reducing him to the twenty.

In consequence of this order, Andry, the government surveyor, was sent on the ground, and he made a survey on the 12th of March, 1772, and two reports to the governor, containing an explanation of his operations and a proposition to leave Dauterive in possession of forty-four arpens front on the river, between well-defined side lines, and in the rear to the Atchafalaya, which was the depth of the original French concession.

Dauterive died in possession in 1776, leaving a widow and four infant children. They continued on the land until 1779, when the widow married a man by the name of Degruys and removed with him and her children to Attacapas, where both her husband and her children had property. Shortly after the marriage Degruys and his wife made an agreement with Governor Galvay to transfer to the government the front of the land in question, with the usual depth of forty arpens, and to build thereon a large number of cabins at a stipulated price, which were intended for the reception of settlers from the Canary Islands who then were expected in the colony. Degunys built and was paid for twenty of these cabins, but the governor had in the meantime changed his mind, established the colonists from the Canary Islands on other lands, and gave this land and the cabins thereon to people of French descent who had been expelled by the British from Acadia, and had taken refuge in Louisiana.

Upon these facts two prominent questions present themselves: first, did Dautervive's claim, as confirmed by the Spanish authorities in 1772, extend to the Atchafalaya between the side lines now claimed? Second, has the claim so recognized ever been abandoned or surrendered so as to annex it to the public domain?

On the first point the evidence in possession of the parties is the plan made by Andry; his report thereon of March 12, 1772; another report from him to the governor of the 28th of March, 1772; and a letter dated July 12, 1772, from Governor Unzaga to Dauterive, notifying him that he had approved the proceedings and proposition of Andry. From Andry's plan and the report thereon, (which may be assimilated to field notes,) though Andry seems also to have had the right to give advice and information and make recommendations to the governor, it appears that he examined and measured the front of the tract with care; that he found that if he laid off for Dauterive

only forty arpens front, Dauterive would lose the most valuable part of his clearings, and also a road of four leagues in depth, from the Mississippi to the Atchafalaya, which he had opened through the woods; that, believing that this would not have been the intention of the governor, particularly as the government had made use of this road to transmit despatches to the posts of Attacapas and Opelousas, he had undertaken to extend Dauterive's front to the end of his clearings, thus giving him forty-four arpens two toises front, and to bound him on the road leading to the Atchafalaya, *subject to the approbation of the governor*. Andry thereafter made a second report, in which he informed the governor that he had surveyed the land for Dauterive in such a manner as to include all the improvements and also the road known as Dauterive's portage, of which the governor had himself made use, and "that he had bounded him on this road and its adjoining lines as far as the river Atchafalaya, (as heretofore,) subject to the approbation of your excellency."

The governor expressly approved Andry's operations, and himself informed Dauterive of this decision by a letter dated July 22, 1772.

Andry's plan and the report of March 12, 1772, show that he measured the front line with care; that he determined the magnetic course of the side lines with much precision, and, after consultation with the neighboring proprietors, that he did *not* run the upper side line on the ground, and the lower side line only a distance of about two arpens back, and that he did not close the rear line at all, nor indicate it on the plan in any manner whatever.

Such a survey would at this day appear very imperfect, but it was all that was required or usual in lower Louisiana at that time. The committee have been furnished with very abundant evidence on this subject—the sworn declaration of the surveyor general of the United States for Louisiana, the testimony of other experienced lawyers taken contradictorily with the United States, and certified copies of many old surveys and French and Spanish titles which have been confirmed and located by the United States. From all this evidence, it appears beyond doubt that in lower Louisiana, where the land is all alluvial, and where the land immediately fronting on the river always had most value, and the rear land was always swamp, with occasional ridges of tillable land, the French and Spanish surveyors had a very uniform method, and that was to run the first line on the ground with care, to determine the magnetic bearing of the side lines, which were always straight lines, in the presence of the adjoining proprietors, and to run a part of these side lines on the ground, and sometimes only a very small part. The rear line was frequently not run at all, and it would appear from the evidence that in the grants which extend to a considerable depth it was never run at all, and that very many of the grants in that peculiar section of country ran back to lakes or other watercourses, which was also the depth given to them when they were granted or sold with an indefinite depth. This local custom evidently originated in the natural features of the country. The rear land was both very difficult of access and had very little value in those days. What has thus been shown to have been a general usage is exactly what was done by Andry in this case; and

upon such surveys the title was always granted. If at any time the parties desired to mark their lines on the ground no difficulty was experienced, for the starting point and the course of the side lines was always indicated in the survey, and, as they were always straight lines, they could easily be protracted by any surveyor. As the Spanish surveyors did not run the rear lines of large tracts—always speaking of the alluvial part of Louisiana—they did not represent it on their plans. The depth was always determined by the language of the granting power, which in this case is free from all ambiguity. Andry was commissioned to set apart a portion of an older grant; he ascertains that the depth of the original grant went to the Atchafalaya, and reports that he "*has left Dauterive with a diminished front, but with his old depth, and that he had bounded him on the road he had made as far as the Atchafalaya as heretofore;*" and his proceedings are unequivocally approved by the governor. Unless the most material evidence in the case, viz: the governor's letter and Andry's report therein recited, are disregarded, it is impossible to come to any other conclusion concerning the depth of the claim.

As regards the second point, it may be said that the act of Degruys and his wife, transferring the front part of the land to the governor, was wholly unauthorized so far as Dauterive's infant children were concerned, and that tract does not affect the present claim of the parties interested, which is only for the remainder of the land. They were infants at the time, and were taken away from that section of the country without any exercise of their discretion. In the Spanish times they could neither have sold the rear land, (for land would then be got for the asking,) nor have made any use of it, as it was of very difficult access, and most of it no doubt under water the greater part of the year. They were under no obligation of doing anything concerning it, and subject to no condition. A possession of sixty-seven consecutive years under the French title, and its partial Spanish confirmation, had ripened their claim into a right, fully and irrevocably vested. In 1821 they made efforts to assert this claim, but the public position of their counsel, the late Edward Livingston, prevented his continued attention to it. But by the act of February 6, 1835, a remedy was pointed out to them. They were led to expect and promised a decision of their claim from Congress if they came in under that act; they did so, and obtained a favorable decision from the register and receiver; and they now request Congress to exercise that appellate jurisdiction which they have assumed by the act of 1835. The committee are therefore of opinion that the claim ought to be confirmed, and herewith report a bill for that purpose, and recommend its passage.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 344.

JACOB HALL.

[To accompany Bill H. R. No. 584.]

APRIL 6, 1860.

Mr. EDWARDS, from the Committee on Indian Affairs, made the following

REPORT.

The Committee on Indian Affairs, to whom was referred the memorial of Jacob Hall, respectfully submit the following report:

Mr. Hall was a contractor for carrying the mail between Independence, in Missouri, and Santa Fé, in New Mexico, a distance of about 850 miles, 500 of which is through Indian country. The contract with the Post Office Department was entered into April 24, 1858; and by it he undertook to carry the mail in six-mule coaches once a week, from July 1, 1858, to June 30, 1862, for $39,999 per annum, payable quarterly.

The contract contained the usual stipulations of promptness and fidelity on the part of the contractor, and reservations of right of varying the service at its pleasure on the part of the department.

Under the reservations a variation requiring increased speed on and after the 23d of August, 1859—reducing through time from 20 to 15 days—was ordered, and the compensation increased $15,000 per annum, commencing at that date.

In September, 1859, in Kansas Territory, near Pawnee Fork, the employés of the memorialist, then engaged in the transportation of the mail under the contract, were attacked by Indians, two of the men killed and a third wounded, seven mules and one horse carried away, and one mule so much injured that it was killed as an act of mercy, and other property connected with the train, of various kinds, destroyed or utterly lost to the owner.

The facts of the destruction and loss of the property aforesaid, and its approximate value, may be regarded as established, although resting upon affidavits taken *ex parte*.

Three witnesses—one of whom was present and wounded, and the other two had knowledge of the property, and that it was in use at that time and place—testify to the loss and to the value, in their judgment, estimating it in detail, and making a total of $2,608.

From this testimony the committee would feel justified and enabled to make up an award in favor of the memorialist, though for, perhaps, a somewhat reduced amount, if they could regard the government as liable to indemnify him, which, however, they do not, but are of the opinion that he has no claim, legal or equitable, for indemnity directly from the public treasury. They are not aware of any obligation on the part of the government to insure citizens against loss from injuries perpetrated on their persons or property by Indians, any more than against loss for injuries to either by the wrongful acts of other citizens; and if it were otherwise, it would be questionable whether, in this case, compensation had not been made in advance for the hazard out of which the injury sustained by the memorialist has arisen.

The government invites proposals for a certain service entire and complete, accompanied by a statement of the price for which it will be done; the government to furnish nothing and stipulating nothing, except to pay as it shall contract to do as the service shall be performed.

In such case it is the opinion of the committee that it is to be presumed that the party proposing, in determining upon the amount of compensation he will claim, will take into account the dangers as well as the difficulties and the requirements which the service will involve. It would most certainly be so in transactions between individuals, and the committee cannot regard it as likely to be different in those between the government and its citizens. How far the amount of compensation in this case sustains this view, it is hardly necessary to inquire. Certain it is, that in the contract with Mr. Hall there is no covenant on the part of the government to protect him in the service, or to indemnify him for any losses he may sustain in its performance.

If the above was the only aspect to be presented of his case, the committee could only report adversely. A question, however, remains: whether he may not indirectly have redress, through the action of the government, from those who have done him the injury of which he complains.

It is stated both in the memorial and in the testimony that the attack upon the train was made by the Kiowa Indians. In treaties with the Indians a very usual stipulation is, that they will do no injury to the property of the citizens of the United States, and that if any such is done by them, the government may withhold any annuity to be paid them, or sufficient thereof, until they shall have made compensation.

On referring to the laws, it is found that a treaty exists with the said Kiowas, in connexion with two other tribes, made July 27, 1853, and by its terms the government agrees to pay to the three tribes the sum of $18,000 annually. In interfering to compel reparation in this case, the committee are of opinion that it would be but justice to the Indians implicated, and who, if guilty, are to be amerced; that before they shall be so adjudged they shall have the opportunity of being heard. And, under the circumstances, they are of the opinion that the memorial, with the accompanying papers, should be referred to

the Secretary of the Interior, with authority to inquire into the case, to notify said Kiowa Indians, or their agent, of this application, and to ascertain with more certainty the amount of loss sustained, and by what Indians it was caused; and if satisfied that it was caused by the Kiowas, as alleged, to withhold their annuity until they shall make reparation by paying to said Hall the amount which he shall adjudge to be the value of the property destroyed and carried away. And for this purpose they report the accompanying bill.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT, No. 345.

GEORGE FISHER.

[To accompany S. R. No. 8.]

APRIL 6, 1860.

Mr. EDWARDS, from the Committee on Indian Affairs, made the following

REPORT.

The Committee on Indian Affairs, to whom was referred a joint resolution relating to the claim of George Fisher, deceased, respectfully report:

That in the year 1813, in Florida, very considerable damage was done to the property of the said Fisher, when living, by the troops and militia, in the name of the United States; that by an act of Congress, approved April 12, 1848, the Second Auditor of the Treasury was directed to examine the proofs of the loss and determine the amount, not however to allow for any loss or destruction by Indians. The Auditor at that time, Mr. McCalla, found the amount of the property destroyed to be of the value of $17,946, and allowed the claimant one-half as destroyed by the troops; leaving the other half to be regarded as destroyed by Indians, and allowed no interest on the claim.

In December of the same year his attention was again called to the claim and he reviewed his decision, and confirmed it so far as related to damages, except that he corrected an error of one hundred dollars in his former computation, and allowed interest on the part of the claim which he had allowed, from 1832 to 1848, amounting to $8,797 94.

In both the examinations he rejected certain depositions which were before him, to wit: those of Wiley Davis, James Turner, and Samuel Harrison, for want of authentication.

Subsequently, on the 12th of May, 1849, a Second Auditor, the successor of McCalla, in accordance with a construction of the act of 1848, by the Attorney General, Hon. Isaac Toucey, allowed a further amount of interest of $10,004 89, being for interest on the damages before allowed from 1813 to 1832.

In 1850, October 19, the claimants perfected the rejected testimony by due authentication, and filed it with the Second Auditor and asked a further allowance upon the claim. The Auditor declined to entertain the application on the ground that the case was closed.

At its second session, the 33d Congress passed the following act:

AN ACT supplemental to an act therein mentioned.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be the duty of the Second Auditor of the Treasury, under the provisions of the act of Congress for the relief of the legal representatives of George Fisher, deceased, approved 12th of April, 1848, to re-examine the said case, and to allow the claimants the benefit of the testimony heretofore marked "*rejected for the want of authentication,*" provided the same is now legally authenticated by the executive of Alabama; the adjustment to be made in strict accordance with the act herein above referred to, and to which this act is barely supplemental.

Approved December 22, 1854.

This act was never executed by the Auditor; its execution was objected to by the Secretary of the Treasury for reasons which it is not now necessary to refer to.

The case was again presented to Congress at the 1st session of the 35th Congress, and a joint resolution was passed transferring to the Secretary of War the duties to be performed by the act of 1854 aforesaid, and by the act to which it was supplemental, and the said Secretary was required to proceed *de novo* to execute the said acts in their plain and obvious meaning, and instructed by said resolution to deduct from such account as he should find equitably due to the legal representatives of said George Fisher all sums which had been heretofore allowed and paid on account of said claim.

Under this resolution the Secretary of War made examination of the case and allowed to the claimant in addition to what had been before allowed, on the 13th of October, 1858, the sum of $9,131 principal, and $30,096 50 for interest thereon from 1813 to the date of the allowance.

It is now suggested that the Secretary of War, in executing the act aforesaid, disallowed some portion of the amount which had been allowed by McCalla and paid, and that he did not give full effect to the testimony of witnesses whose depositions had been before rejected for want of authentication, but which were then before him duly authenticated, and Congress are now asked to authorize and require his revisal of his adjudication, and by the joint resolution passed by the Senate he is required so to do, and under instructions as to the manner in which he shall execute the duty first assigned to him, not contained in the resolution by which the duty was originally imposed.

Under this statement of facts the committee are of opinion that the resolution will be sufficiently specific if the Secretary, without any more specific instructions, shall be authorized and required to re-examine the case, and to give effect to all the testimony filed therein, including the depositions before referred to, and to correct any error in his first award, and to make such additional allowance, if any, to the claimant as he shall think the justice of the case requires; and for this purpose they report the accompanying amendment to said resolution.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 346.

ALMON W. BABBITT—ADMINISTRATORS OF.

[To accompany Bill H. R. No. 585.]

APRIL 6, 1860.

Mr. ALDRICH, from the Committee on Indian Affairs, made the following

REPORT.

The Committee on Indian Affairs, to whom was referred the memorial of Joseph E. Johnson, one of the administrators of the estate of Almon W. Babbitt, deceased, late secretary of Utah, having had the same under consideration, beg leave to make the following report:

From the proofs adduced in the case it appears that Mr. Babbitt was secretary of the Territory of Utah, and whilst acting in that capacity he visited Washington city during the summer of 1856, for the purpose of adjusting his accounts with the Treasury Department, and obtaining certain moneys appropriated by Congress, for the disbursement of which he was the legally authorized agent of the government, said moneys being for the purpose of defraying the legislative expenses of the Territory, and for completing the construction of a penitentiary at Salt Lake City, Utah Territory.

After his accounts had been adjusted a considerable sum of money was advanced to him by the Treasury Department, in drafts amounting to the sum of twenty-six thousand five hundred dollars, ($26,500,) as shown by the statement of the First Comptroller of the Treasury Department, marked "B." Whilst in Washington, Mr. Babbitt disposed of twelve thousand dollars ($12,000) of the said drafts to Livingston, Kincaid, & Co., on account of which he took their note, payable at Salt Lake City, for the sum of eight thousand dollars, ($8,000,) with the additional sum of four hundred and twenty dollars, ($420,)—being as supposed for premium or exchange—making eight thousand four hundred and twenty dollars, ($8,420.) That he left Washington during the month of July, 1856, and upon arriving at St. Louis he purchased stationery, carpets, and other articles for the use of the legislative assembly of Utah Territory.

Whilst in Washington he made arrangements with the Hon. J. M. Bernheisel, then delegate to Congress from the said Territory, who had received instructions from the State Department, to transport a large quantity of judicial and executive documents belonging to said Terrritory that had accumulated at Fort Leavenworth from the organ-

ization of the Territory; and for this purpose he purchased wagons, stock, and outfit, to convey the same to Salt Lake, with the other property previously purchased on account of the government, and for private use. Whilst this train was *en route* for Utah, and in the vicinity of Fort Kearney, it was attacked by the Cheyenne Indians, and all the persons in charge of said train save one were killed or wounded, most of the stock driven off, and a considerable quantity of the property destroyed, as will be shown by the letters of H. W. Wharton, captain commanding at Fort Kearney, and which are marked "E." A few days later Mr. Babbitt arrived at Fort Kearney, accompanied by two men, on his way to Salt Lake City. At Fort Kearney he made arrangements for the transportation from thence to Salt Lake of the property which had been saved from the train.

It is further shown, by the letters of Captain Wharton, that Mr. Babbitt and his party left Fort Kearney on the 2d of September, 1856, and about one hundred and twenty miles above that place they were attacked by a party of Cheyenne Indians and killed, his property and stock taken off, and his carriage burned. Many of his papers were found scattered upon the plains, among which were five one thousand dollar treasury drafts, which were returned to the department and credited to the account of Mr. Babbitt, and a further amount of four one thousand dollar treasury drafts were picked up on the plains by a Salt Lake emigrant, turned over to the administrators at Salt Lake, and by them to the Treasury department, and credit given to the account of Mr. Babbitt for the same.

The above are the facts in the case, as near as can be ascertained; and it appears from the statement of the First Comptroller of the Treasury, marked "B," that the estate of Mr. Babbitt is indebted to the government in the sum of twenty-one thousand three hundred and ninety-two dollars and seventy-one cents, ($21,392 71,) of which amount there is in the hands of the administrators at Salt Lake City, Utah Territory, the sum of eight thousand four hundred and twenty dollars, ($8,420,) which was collected of Livinsgton, Kincaid & Co., for their note previously referred to, which, when paid to the government, will leave a balance of twelve thousand nine hundred and seventy-two dollars and seventy-one cents, which appears to have grown out of suspended items in the account of the late Secretary Babbitt, and of property and money lost upon the plains.

Your committee are, therefore, of the opinion that the value of the money and property lost and destroyed by the Cheyenne Indians, at the times and in the manner hereinbefore stated, and belonging to, or in the possession of, the late Almon W. Babbitt, should be ascertained and inquired into by the First Comptroller of the Treasury; and they, therefore, report the accompanying bill for that purpose.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 347.

JOHN RANDOLPH.

APRIL 6, 1860.—Ordered to be printed.

Mr. BUFFINTON, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the petition of John Randolph, of Tennessee, praying bounty land for military services, report:

That the said John Randolph has heretofore been an applicant for bounty land at the Pension office, and the committee have obtained from said office the papers filed therein in support of said claim. From the declaration and evidence filed in the Pension office, as aforesaid, it appears that the petitioner was a private in the company commanded by Captain Gilbert C. Russell in the regiment of United States mounted infantry commanded by Colonel George Doherty, in the expedition sent by order of the United States government to take possession of Louisiana in 1803; that he volunteered as a substitute for one Snodgrass, who was drafted in Jefferson county, Tennessee, in November, 1803, for six months; that he marched to Louisiana, and continued in actual service nearly four months, and was honorably discharged from the service in said Jefferson county, Tennessee, on the 13th day of March, 1804. The original discharge, signed by Captain Russell, showing service from the 16th of November, 1803, to the 13th of March, 1804, is on file with the application.

This claim was rejected by the Commissioner of Pensions on the ground that this country was not "engaged in any war" during the period of Mr. Randolph's service, and that "it does not appear that Mr. Randolph was at any time engaged in battle during the services alleged."

As there is no general law granting bounty land for services in the army on peace establishment, except in cases where the claimant has been actually engaged in battle, the committee can see no good reason why Mr. Randolph's case should be made an exception to the general rule prescribed by law.

The committee therefore report adversely to the prayer of the petitioner.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 348.

FREDERICK F. BROSE—LEGAL REPRESENTATIVES OF.

[To accompany Bill H. R. No. 586]

APRIL 6, 1860.

Mr. POTTLE, from the Committee on Naval Affairs, made the following

REPORT.

The Committee on Naval Affairs, to whom was referred the petition of the legal representatives of Frederick F. Brose, report:

It appears from the papers in this case that Passed-midshipman Frederick F. Brose, while on board the United States frigate Savannah, by order of Commander Samuel Mercer, performed the duties of lieutenant, there being no lieutenant on board said vessel; that he performed said duties from the 13th of October, 1853, to the 22d day of April, 1854; and the commander certifies that he performed the duties to his entire satisfaction.

The law provides that when such services are performed by a midshipman by the *order* of the commander, and that order shall be approved by the department, the midshipman performing such service shall be entitled to lieutenant's pay.—(Act August 3, 1848.)

In this case, the order of the commander was a verbal one, and the department refuse to approve of it under the act.

As the omission appears not to have been the fault of the midshipman, and as he performed the duties well, we see no reason why he should not have been entitled to his pay in accordance with the spirit of the act aforesaid.

As it appears, further, that Midshipman Brose died without receiving such pay, your committee, in accordance with the prayer of the petition, ask leave to report a bill for the relief of his legal representatives in this respect.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 349.

SARAH BRASHEAR.

APRIL 6, 1860.—Ordered to be printed.

Mr. POTTLE, from the Committee on Naval Affairs, made the following

REPORT.

The Committee on Naval Affairs, to whom was referred the petition of Sarah Brashear, report:

The petition of Mrs. Sarah Brashear, in this case, shows that her son, Wm. C. Brashear, deceased, was a captain in the navy of Texas at the time of the annexation of that republic to the United States; that he died before the passage of the act of Congress of the 3d day of March, 1857. The petitioner now asks that Congress will pass an act granting to her the benefits that her said son would have been entitled to under said act had he lived.

Your committee beg leave to report, that the evidence in this case is insufficient to sustain this case, if it were thought advisable to extend the provisions of said act to the legal representatives of the officers included in said act. But your committee do not think it advisable to extend the provisions of said act, and therefore report adversely to the prayer of said petitioner.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 350

GEORGE P. MARSH.

[To accompany Bill H. R. No. 8.]

APRIL 6, 1860.

Mr. ROYCE, from the Committee on Foreign Affairs, made the following

REPORT.

The Committee on Foreign Affairs, to whom House Bill No. 8, entitled an act for the relief of George P. Marsh, was referred, submit the following report:

Mr. Marsh was appointed minister resident at the Ottoman Porte on the 29th day of May, 1849, and having entered upon the duties of his mission, he continued in charge of the same until the 19th day of December, 1853, when he had his final audience of leave.

By special instructions, under date of April 29, 1852, the Department of State ordered Mr. Marsh to proceed to Athens in Greece, to investigate certain complaints made by Dr. Jonas King, an American citizen resident in Greece, against the government and judicial tribunals of that country, report upon them, and after transmitting his report, to remain at Athens or in its neighborhood until he heard from the department. In pursuance of these instructions, Mr. Marsh embarked for Athens as soon as a ship was ready to receive him, and arrived at that city on the 31st day of July, 1852.

He immediately thereafter engaged in the intricate and laborious investigations committed to him, which required an extended study of the civil and criminal laws of that kingdom, and the personal and critical examination of a great mass of manuscript testimony, judicial records, and other writings in the language of the country, as well as the execution or revision of translations of many of them, and were consequently attended with a vast amount of labor and difficulty.

Having completed his reports in the month of October following, he transmitted them to the State Department, and in compliance with his instructions awaited the further orders of the department.

Upon the 5th day of February, 1853, the President of the United States, through the State Department, instructed Mr. Marsh to enter into communication with the government of Greece, and endeavor to obtain redress for the wrongs which Dr. King had suffered at the hands of that government and its judicial tribunals. He accordingly

commenced a negotiation with the minister of foreign affairs, and remained at Athens, in the prosecution of the same, until the 25th of June, 1853, at which time the alarming posture of affairs at Constantinople required his immediate return thither, and he accordingly proceeded to that city, but the correspondence with the Greek minister was continued until his recall.

It will thus be seen that Mr. Marsh was absent from Constantinople and engaged in the duties of this special mission for about one year; and although the department has frequently acknowledged the importance and value of the services rendered by Mr. Marsh, he has never received any compensation therefor, for the reason that there never has been any fund provided by law out of which he could be paid.

In accepting the appointment of minister resident to the Ottoman Porte, it could not have been anticipated by Mr. Marsh that he would be required to perform the services above described, in addition to the duties of his mission, for the compensation attached to said office.

Whenever our foreign ministers have been required by the government to perform duties not appertaining to their mission, and at other points than those to which they were accredited, the government has always recognized its liability to pay for such extra services. The amount to be paid must of course depend upon the nature and character of the services rendered.

Your committee do not feel called upon to cite precedents in support of this principle, and will only refer to the cases of Messrs. Schenck and Pendleton, who were paid $18,000 each for negotiating treaties with the republics of Paraguay and Uruguay, while they were ministers to Brazil and to Buenos Ayres.—(See United States Statutes at Large, volume X, p. 659, and volume XI, p. 449.)

Mr. Marsh's account for travelling expenses has been allowed and paid by the department. But he was subjected to large pecuniary losses, on account of this mission to Greece, which have not been repaid; and your committee believe that the sum of $9,000 would be no more than a fair and just compensation for his services on account of said mission to Greece, and therefore recommend that he be paid that amount in full for all claims on account of said mission.

Mr. Marsh also claims to be allowed pay for judicial services while minister resident to the Ottoman Porte. This claim is entirely distinct from the one above reported upon, and your committee are not prepared at this time to make any recommendation upon this portion of his claim.

Your committee recommend an amendment to the bill by striking out all after the enacting clause, and inserting the accompanying, and when so amended, recommend its passage.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 351.

ANTON L. C. PORTMAN.

[To accompany Bill H. R. No. 587.]

APRIL 6, 1860.

Mr. HUMPHREY, from the Committee on Foreign Affairs, made the following

REPORT.

The Committee on Foreign Affairs, to whom was referred the memorial of Anton L. C. Portman, late clerk to Commodore M. C. Perry, while in command of the East India squadron, praying additional compensation for his services as Dutch interpreter during the negotiations of the treaty with Japan, have had the same under consideration, and now report:

That it appears from the evidence before the committee (portions of which are hereunto annexed) that the petitioner, Mr. Portman, was the clerk of Commodore M. C. Perry while in the command of the East India squadron, from the 17th of April, 1852, until the return of the frigate Mississippi in April, 1855, during one year of which time he also acted as commodore's secretary, and during all which period of three years he received the rated pay of $500 a year as such clerk.

That it had been provided in the preliminary regulations that the negotiations attending the proposed treaty with Japan should be conducted in the Chinese language, and Mr. Williams was employed as interpreter in that language at a salary of $500 per month. It became manifest that the difficulties and embarrassments attending the use of that language in official documents and intercourse were so great that the Japanese ministers refused to conduct the negotiations further therein, and it was accordingly provided by article 7th of the "additional regulations" that "henceforth the Chinese language should not be employed in official communications between the two governments, except when there was no Dutch interpreter."

That Mr. Portman, being perfectly acquainted with the Dutch language, was employed by Commodore Perry from the time the squadron left the United States in translating from that and various other languages books and papers for the use of the commodore, relating to the history, manners, and customs of this singular people, and thus rendering most important aid to the commodore minister in his preliminary preparations for the negotiations. That after the arrival of the squadron in the Japanese waters, the services of Mr. Portman were

in constant requisition as interpreter in the communications with the authorities there, and after the substitution of the Dutch in place of the Chinese language, as the medium of intercourse above referred to, all the delicate and most responsible duties of interpreter in settling the terms and finally drawing up the treaty, were confided to Mr. Portman, and the intelligence, ability, and fidelity with which he performed those duties are abundantly certified in the letters and testimonials of Commodore Perry and the other officers of the expedition. Not only was a large amount of interpreting and translating thrown upon the memorialist, but the final engrossed copies of the treaty exchanged by the parties were prepared by him.

It appears to the committee that the services of Mr. Portman were of very great importance to the expedition, and indeed, after the refusal of the Japanese ministers to treat in the Chinese language, much of the success of the enterprise was to be attributed to the fortunate circumstance of the presence in the squadron of a gentleman at once so trustworthy and so capable of performing the delicate duties devolved upon him.

The memorialist now asks that such additional compensation, besides his salary of $500 per annum as clerk, shall be now allowed him as shall be proportionate to the importance of the services rendered.

The Committee on Foreign Relations in the Senate, in a favorable report upon a former memorial of the petitioner in 1857, say:

"In reply to a letter of inquiry addressed by the committee to the Navy Department, the Secretary under date of July 16, 1856, says: 'Clerks in the naval service are appointed by officers entitled to them with the sanction of the department. My impression has always been that in selecting their secretaries and clerks, the commodores endeavored to secure such as could aid them in their correspondence by their attainments in different languages. I am not aware of any precedent for extra pay on account of translating or interpreting performed by their clerks.' Whilst the committee are disposed to concur with the Secretary of the Navy in the opinion here indicated, that for the ordinary translating and interpreting incident to their position clerks in the naval service should not be entitled to receive extra compensation, yet they cannot but regard the present case as resting upon entirely different grounds. Mr. Portman's duties as interpreter in the conduct and negotiation of a treaty between our government and that distant and secluded empire involved much and delicate responsibility. They were beyond and additional to his regular duties as clerk to the commodore, and for their performance he is, in the opinion of the committee, properly entitled to additional compensation."

In fixing a rule for the compensation which the committee would recommend, they find that Congress have granted to W. Heine, as artist of the expedition, the sum of $1,500 per year in addition to his salary of $500 as master's mate.—(11 Statutes at Large, 543.) And the same sum per annum to Dr. James Morrow, as agriculturist.—(Idem, p. 500.)

The committee are of opinion that the services of Mr. Portman should surely not be rated lower than those of the above-mentioned persons.

Though it appears that the treaty was concluded in about one year after the squadron entered the bay of Jeddo, yet in view of the important preliminary labor as a translator and compiler performed by the memorialist, and his services afterwards in assisting in drawing up the history of the expedition, the committee are of the opinion that this compensation ought to extend to two of the three years he was attached to the service. They therefore report a bill in his favor for the sum of three thousand dollars, and recommend its passage.

I.

I certify that Mr. A. L. C. Portman, rated and receiving pay as captain's clerk in the United States squadron late under my command, rendered, in addition to his regular duties as clerk, important services as Dutch interpreter, for which he has not received any additional compensation.

M. C. PERRY,
Late Commanding U. S. Naval Expedition to Japan.

NEW YORK, *November* 26, 1855.

II.

I certify that Mr. A. L. C. Portman, rated captain's clerk, performed the extra duties of translator and interpreter during the whole period of the negotiations of Commodore M. C. Perry with the Japanese commissioners in 1853 and 1854, in a very satisfactory manner, in addition to his regular duties as clerk, and by order of the commodore.

As commander of the flag-ship "Mississippi," on her outward passage, it came under my observation that Mr. Portman was certainly engaged in translating from various works in different languages and compiling information on Japan, of which Commodore Perry, who placed implicit confidence in him, fully availed himself in his subsequent and important negotiations.

I believe from the character, responsibility, and the excellent performance of his extra services, that Mr. Portman is entitled to extra compensation, and fully recommend his petition to the favorable consideration of Congress.

S. S. LEE,
Commander United States Navy.

WASHINGTON, D. C., *December*, 1859.

III.

I have great pleasure in certifying to the ability and fidelity with which Mr. A. L. C. Portman discharged the duties of interpreter, during the negotiation of the treaty with Japan by Commodore Perry,

in 1853 and 1854. Mr. Portman was at the time rated captain's clerk, and his services were of the first importance, as I do not believe there was another person in the squadron capable of performing them.

It was not only while actually engaged in the negotiations that his services were so important; but by his labor in translating works on Japan into English from other languages on the passage out, Commodore Perry was furnished with much valuable information on the manners, customs, and peculiarities of the Japanese, of which he fully availed himself in his transactions with them. My opportunities of noticing his capacity and intelligence, and appreciating the value of his services, were perhaps greater than those of any one else, and I heartily recommend his petition to the favorable consideration of Congress.

H. A. ADAMS,
Captain of the Fleet on the Japan Expedition.

IV.

"THE REST," NEAR EASTON, MD,
January 31, 1856.

I hereby certify that Mr. A. L. C. Portman acted as interpreter in the Dutch language for Captain H. A. Adams, Lieutenant John Contee, and myself, on board the United States ship "Susquehanna," under my command, during the entire preliminary negotiations for the first landing of Commodore M. C. Perry in Japan.

Mr. Portman's valuable services were indispensable on that occasion, as the negotiations could not have progressed without him. His intelligence, and the tact he displayed in conversing with those singular people, the Japanese, together with his amiable, gentlemanly deportment, and honesty in stating faithfully what he was directed to say, elicited our admiration and thanks. I consider him justly entitled to a high compensation for his services as "interpreter" while serving on the Japan expedition.

FRANKLIN BUCHANAN,
Captain United States Navy.

V.

WASHINGTON NAVY YARD,
November 26, 1859.

I certify that Mr. A. L. C. Portman performed the extra duties of translating and interpreting in a very satisfactory manner, in addition to his regular duties as clerk to the late Commodore M. C. Perry, during his negotiations with the Japanese commissioners in 1853 and 1854, and during those negotiations frequent reference was had to abstracts translated and compiled by Mr. Portman from Dutch, French, and German works on Japan, for the use of, and by order of,

the commodore. I have no hesitation in saying that the services rendered by Mr. Portman were very valuable to Commodore Perry, who placed implicit confidence in him throughout the negotiations. His tact, and firm gentlemanly bearing, and honesty of purpose towards both parties secured him the friendship of the Japanese, which contributed much towards the final success of those negotiations.

FRANKLIN BUCHANAN,
Captain United States Navy.

VI.

NEW YORK, *January* 2, 1856.

I hereby certify that Mr. Portman has translated into English, for the use of the compiler of the report of Commodore Perry's expedition to Japan, *thirteen foolscap pages of manuscript.*

FRANCIS L. HAWKS.

Approved: M. C. PERRY.

TREASURY DEPARTMENT,
Fourth Auditor's Office, August 9, 1855.

SIR: In answer to your letter of the 7th instant, I inform you that Mr. S. W. Williams, Chinese interpreter, was on the rolls of the purser of the United States steam frigate Powhatan, from February 19 to August 31, 1854, at the rate of $300 per month. There are no rolls of that vessel in this office for a later period than September 30, 1854.

I am, sir, respectfully, your obedient servant,

A. O. DAYTON.

A. L. C. PORTMAN, Esq., *Williamsburg, L. I.*

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 352.

ARTHUR ELLIOT—CHILDREN OF.

[To accompany Bill H. R. No. 588.]

APRIL 6, 1860.

Mr. DELANO, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of Samuel N. Elliot and others, praying for an allowance to them of the pension which should have been awarded to their mother, Mary Elliot, report:

That the claim of pension is in virtue of services alleged to have been rendered by Arthur Elliot, who died in Habersham county, Georgia, November, 1837.

The evidence is ample, showing the intermarriage of Mary Elliot with the said Arthur Elliot on the 4th day of July, 1784, and that Mary Elliot died October 10, 1855. The only question admitting of any doubt is as to the identity of Arthur Elliot, the father of the present petitioners, and husband of Mary Elliot, with the soldier and private by that name who served in the revolutionary war.

It clearly appears by the record evidence from the comptroller's office in South Carolina, that one Arthur Elliot served in the militia in that State, for which service he duly rendered his bill, which was allowed, showing at least a service of 357 days, and we are satisfied upon all the evidence that the person rendering these services is the Arthur Elliot, the father of the petitioners. It also appears that soon after the passage of the act of 7th June, 1832, Arthur Elliot applied to a local magistrate in Georgia for the benefit of said act, but died before an ultimate adjudication upon his case at the proper department.

It also appears that Mary Elliot made an application in her lifetime for a pension as the widow of said Arthur, and that pending her application she died, viz: on the 10th day of October, 1855.

In view of all the facts, we recommend the allowance to the children of said Arthur and Mary Elliot provided in the accompanying bill.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 353.

REBECCA DAVIS, WIDOW OF JESSE, OF SOUTH CAROLINA.

[To accompany Bill H. R. No. 589.]

APRIL 6, 1860.

Mr. DELANO, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of Rebecca Davis, widow of Jesse Davis, late of South Carolina, report:

That it appears upon formal proof that the petitioner was married to Jesse Davis, the party alleged to have served as a soldier in the revolution, on the 27th October, 1836, and that said Jesse Davis died 22d December, 1851; and the only question in the case open to doubt is, whether the said Jesse rendered the service alleged and for what period; that he served as a soldier we think is unquestionable, as he accompanied his own original application with the certificate of his captain, Armistead Shelton, which both demonstrates in part the character of the service rendered, and indicates a date from which the period of service we think may be fairly computed. The certificate of the comptroller of North Carolina also shows that that State acknowledged itself indebted to Jesse Davis in certain specified sums at several dates extending through a period of more than six months from the date when Captain Shelton's certificate shows that he was already in the service.

Being satisfied as we are that this same Jesse Davis was the husband of the petitioner, and that he in fact served for a period longer than six months, we recommend the accompanying bill, allowing twenty dollars per annum from 1832 to date, and to continue during her life.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 354.

COLLEY RUCKER—ADMINISTRATOR OF.

APRIL 6, 1860.—Ordered to be printed.

Mr. DELANO, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of William Hays, administrator of Colley Rucker, praying for a pension for the service of said Rucker, have had the same under consideration, and report:

That from the testimony in this case your committee are satisfied that there is no just claim, and therefore submit the following resolution:

Resolved, That the prayer of the petitioner ought not to be granted.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 355.

CATHARINE COMPTON, ONLY CHILD OF JOEL CALLAHAN.

APRIL 6, 1860.—Ordered to be printed.

Mr. DELANO, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of Catharine Compton, only child of Joel Callahan, for arrears or increase of revolutionary pension, report:

That the father of this petitioner, Joel Callahan, has heretofore been pensioned by this government as a private, at the rate of forty dollars per annum, and this application of his daughter, and only surviving child, proceeds upon the ground that, by a fuller exhibition of proof, it appears that said Joel Callahan served, in fact, as a captain, and should have been allowed the increased pay belonging to his rank.

The committee, however, are unable to find, in any of the evidence offered, such decisive proof of his services in the grade of captain as to feel justified in increasing the allowance.

The extract from the History of North Carolina, reciting that he was present at the battle of King's Mountain, and then held the rank of captain, we think more than controverted by the oath of the petitioner's father, Joel Callahan, on file, who swears that "*he was in no battle of any importance.*"

The committee therefore report adversely to this petition.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 356.

WILLIAM HUMPHRY—CHILDREN OF.

[To accompany Bill H. R. No. 590.]

APRIL 6, 1860.

Mr. BABBITT, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of the surviving children of William Humphry, deceased, a soldier of the revolution, ask leave to report:

That they have had the said petition, with the accompanying documentary evidence, under consideration; that the evidence sufficiently establishes the fact that the said Humphry was a soldier of the revolution, and served as such as a private in the American army at the siege of Yorktown, and continued in such service till after the surrender of the British army; that the length of time he served in the said army does not appear except from his own affidavit, which states at seventeen months. It also appears that said Humphry in his lifetime, to wit, August 23, 1833, made application in due form for a pension under the act of the 7th of April, 1832, the granting of which, through no fault or neglect on his part, was delayed till his decease, which was in March, 1850; that he left surviving children, the petitioners, but no widow; that said children have been diligent in presenting their claim for the arrears of pension due their deceased father at the time of his death.

The committee therefore are of the opinion that said children are entitled to the relief prayed for, and ask leave to report a bill accordingly, granting such relief to the extent to which their parent would have been entitled for one year's service.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 357.

ARCHIBALD MERRIMAN.

[To accompany Bill H. R. No. 591.]

APRIL 6, 1860.

Mr. FENTON, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Archibald Merriman, report:

That they have examined the proofs, from which it appears that the petitioner enlisted as a private in May, 1813, under Captain Amberson, a recruiting officer, in Stoystown, Somerset county, Pennsylvania. He marched to Pittsburg, and from thence, under Colonel Hugh Brady, marched to Fort George, in Canada; thence down the St. Lawrence to French Mills, under General Wilkinson; from thence marched to Plattsburg; from Plattsburg they went to Burlington, Vermont; afterwards joined General Brown's army at Black Rock; was in the battle of Chippewa, July, 1814; was also in the battle of Lundy's Lane, on the 25th of the same month, and was wounded; fought bravely, and was in the charge made by Lieut. Sturgis on the enemy's cannon, in which Sturgis was killed. Afterwards was at Fort Erie when it was blown up, in August, 1814, and was there again wounded in the leg, and in consequence of which he has been unable for sixteen years past to perform manual labor.

Your committee concur in reporting a bill granting him a pension at $8 per month, dating from December 13, 1858, the time of the filing of his application to Congress. Your committee would further report that his application to the Pension office was rejected on account of some defect in the rolls, his name not being enrolled in due form; and they further report that the petitioner was promoted to the office of corporal in 1814.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 358.

CAROLINE E. CLARK.

[To accompany Bill H. R. No. 592]

APRIL 6, 1860.

Mr. FENTON, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Caroline E. Clark, report:

From the petition and evidence in this case it appears that Ransom Clark enlisted as a private in company B, 2d regiment United States artillery, on the 9th day of August, 1833, for three years; that he served faithfully until the 28th day of December, 1835, when, at a place called Dade's battle ground, and near the river Withlacoochee, in East Florida, while in the service of the United States, and in the line of his duty, he was severely wounded in his right shoulder, forever depriving him of the use of his right arm; also in the right thigh, and in the right arm above the elbow; also in the right temple, and in the back, in consequence of which wounds he was discharged for a pension, on a surgeon's certificate of total disability, at Fort Brooke, East Florida, on the 29th of April, 1836. The certificate of disability is signed by John M. Cuyler, assistant surgeon United States army, and his discharge by William Lindsay, colonel, commanding 2d artillery. Previous to his being wounded he was taken and held in captivity by the Indians for about eight months; and on the occasion of his being wounded all his party were massacred by the Indians, and he only escaped death by feigning it. From an abridged history of the United States, by Mrs. Emma Willard, page 321, she says: "In the afternoon Osceola and his mounted party returned triumphant from the massacre at Camp King, and attacked with whoop and yell the enclosure of the thirty survivors; one by one, bravely fighting, the officers and soldiers fell. The narrator, Ransom Clark, who was wounded, and escaped death by feigning it, and then almost by miracle working his way through the woods. He eventually died of his wounds, and thus every one of Dade's army was killed on that fatal field."

He was placed on the roll of invalid pensioners, at $8 per month, to commence on the 23d day of June, 1836, and received such pension

up to the period of his death. He was married at Albany, N. Y., in November, 1838, to Eunice Luceba French, and she remained his wife until the 18th day of November, 1840, when he died in York, Livingston county, N. Y., aged about twenty-eight years, of the aforesaid wounds; his death being more immediately caused from fever produced by the rifle ball which lodged and remained in his shoulder.

The historical fact and testimony of Nathan B. Clark leaves no doubt that the premature death of said Ransom Clark was caused by the aforesaid injuries, which he received while in the line of his duty, and in the service of the United States.

The said Eunice Luceba Clark became a widow at his death, and remained such widow until the 2d day of August, 1853, when she married Gideon Knokes, and is now living with him as his wife. That said Ransom Clark left him surviving one child only, Caroline E. Clark, who was born on the 24th day of August, 1839. That she applied for a pension as the minor child of Ransom Clark, under the acts of July 3, 1853, and other acts, but her claim was rejected on the ground (see Commissioner's letter of April 27, 1857) that she was not a minor child under sixteen years of age at the time of her application. The aforesaid widow of said Ransom Clark never applied for nor received a pension, but by an assignment in writing duly executed and acknowledged, has transferred all her right to such pension to the aforesaid Caroline E. Clark, the petitioner.

Your committee are of opinion that, under the peculiar circumstances of this case, the petitioner is entitled to a pension of four dollars per month from her father's death, November 18, 1840, until the 2d day of August, 1855, when she was sixteen years of age, and accordingly report a bill and recommend its passage.

See acts of March 19, 1836, July 4, 1836, July 21, 1848, February 22, 1849, and February 3, 1853.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 359.

HENRY SANFORD.

[To accompany Bill H. R. No. 593.]

APRIL 6, 1860.

Mr. FENTON, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Henry Sanford for a pension, have examined the case, and report:

That the evidence in this case shows that the said Henry Sanford enlisted in December, 1812, in a company of volunteers commanded by Captain John Commins, and marched to the eastern frontier of the then district of Maine; that he was frequently on duty during the night time, and through the winter, watching for smugglers.

Near the close of the winter he was taken sick while in the service; was very sick for about two months, after which he partially recovered so as to occasionally be on duty and attend roll-call, and was discharged at Eastport in December, 1813. It further appears that soon after his return home he was taken down sick again by a disorder in the back and kidneys; and after about six months he measurably recovered so as to in part attend to his business as a farmer for a time, but for the last twenty years has been entirely prostrated, and for more than sixteen years has been unable to stand upon his feet. These facts are substantiated by the affidavits of two of his fellow-soldiers who were with him in the United States service in 1812 and 1813, and have been well acquainted with him since, now reside near him, and have frequently visited him during his confinement; and his family physician also testifies that he has frequently visited him professionally during thirty-nine years last past, and that said Sanford has been entirely prostrated, has had a running sore on his back for twenty years, and that he has no doubt his prostration is in consequence of his exposure as aforesaid. Your committee therefore report a bill for his relief, and recommend its passage.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No 360.

MOSES GROOMS.

[To accompany Bill H. R. No. 594.]

APRIL 6, 1860.

Mr. FENTON, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Moses Grooms, report:

That they have had the same under consideration, and find that he volunteered as a private into the company of Captain H. Sumpter, of the South Carolina volunteers, Palmetto regiment; that he proceeded with said company to Charleston, South Carolina, to be mustered into the service, but while on sentinel duty one very dark night he was so severely kicked by a mule that he was disabled from being mustered into the service, and was confined in the hospital at Charleston for six weeks thereafter; that he is now a cripple from the effects of said kick; that he is very poor and unable to earn a living. The nature and extent of his disability is sworn to by his commanding officer. The objection to the allowance of a pension by the proper department is that he had not been mustered into the service. Your committee are satisfied that it was no fault of his that he was not mustered into the service. They report a bill granting a pension of eight dollars per month from the 14th of May, 1858, to continue during life.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 361.

JOHN NOTT—WIDOW OF.

[To accompany Bill H. R. No. 595.]

APRIL 6, 1860.

Mr. FOSTER, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the application of Judith Nott, widow of John Nott, for an increase of pension, respectfully report:

It appears from the evidence adduced before your committee in the application of Judith Nott, widow of John Nott, for an increase of pension, that her husband had served in the United States navy as marine, seaman, and gunner, for a period of fifteen years. The certificate of Commodore Keever proves this.

It further appears, from the testimony of the late Lieutenant Jonathan D. Ferris, that in August, 1814, during the late war with Great Britain, he was ordered to the command of gunboat No 5, one of the flotilla then protecting the coast of Louisiana, and that when he mustered the crew, on taking his command, he found John Nott on board as one of them, performing the duties of gunner; that he was on board at the time of the destruction of the smugglers and pirates at Barrataria, in September, 1814; and that he gallantly fought at his gun when, on the 14th of December, 1814, the flotilla, while under the command of the late Commodore Jones, was captured.

The evidence clearly shows that in this action, where "he conducted himself with fidelity and bravery," to use the language of Lieutenant Ferris, while at his gun, and in the line of his duty, he received a wound in his right hand, which caused the amputation afterwards of his right arm, and received splinter wounds in his right hip and legs, which caused the permanent shortness of that side of his body.

It appears from the evidence that he subsequently applied to the Pension office for the pension due him as an invalid; but, owing to some cause, it was delayed being granted until he died without obtaining it. His widow, by reason of her ignorance of the mode of procedure, and inability from poverty to employ aid, never renewed the application in her own right until, at the 1st session of the 35th Congress, she applied for a pension as the widow of the said John Nott; and

on the 8th day of June, 1858, Congress granted her a pension at the rate due a seaman, when she was entitled to and ought to have received the pension due to a gunner, he having received his disabling wound while acting in this latter capacity.

Your committee are of opinion that the petitioner was entitled, under the law and the facts of this case, to the pension her husband was entitled to at the time of his death, being the half pay of a gunner and the half pay of a seaman; and they accordingly report a bill.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 362.

JAMES VAN PELT.

[To accompany Bill H. R. No. 596.]

APRIL 6, 1860.

Mr. FOSTER, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of James Van Pelt, a soldier in the late war with Great Britain, report:

That it appears from the evidence before your committee that James Van Pelt was a corporal in the company of New York militia commanded by Captain Abner Woodworth, and it also shows that after he so entered the service he became sick from extraordinary exposure to the weather and cold while on the march westward and in the line of his duty, which resulted in partial paralysis, that has incapacitated him from labor.

Your committee think that the petitioner's averments, as set forth in his petition, are sustained by the proof, and report the accompanying bill, and ask its favorable consideration.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 363.

WILLIAM W. DIEHL.

[To accompany Bill H. R. No. 597.]

APRIL 6, 1860.

Mr. FOSTER, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of William W. Diehl, praying an increase of pension, report:

That the petitioner was a soldier in the war with Mexico, and received a wound in the elbow by a musket ball. He was honorably discharged as wounded, and subsequently obtained a pension for partial inability to perform his manual labor. Since then has totally lost the use of his arm, as certified by the United States surgeon.

The petitioner asks an increase from $5 33, the pension he now receives, and your committee are of opinion it should be increased, to $8 per month, and they therefore report the accompanying bill, and ask its favorable consideration.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 364.

DANIEL LUCAS.

[To accompany Bill H. R. No. 598.]

APRIL 6, 1860.

Mr. FOSTER, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom were referred the petition and papers of Daniel Lucas, a soldier, asking to be allowed a pension, report:

Your committee have examined this case with care, which presents the following state of facts:

The petitioner, Daniel Lucas, enlisted in the United States army, and was attached to company E, 3d United States infantry, then under the command of Captain Van Horne, which was ordered to New Mexico. It appears from the proof that while in garrison he, with others, was ordered by Captain Van Horne to haul water from the Rio Grande river for the use of the troops; that while in the execution of these orders, and during the progress of loading the wagons with hauls of water, he overstrained himself, and was seen suddenly to fall, and his comrades going to his assistance found he had been severely ruptured and powerless. The army surgeons certify he has hernia, and in consequence he was discharged from the service for disability, as unfit for the service. There seems to be no doubt but this hernia is fixed and incurable. The petitioner applied to the Pension office for a pension, but the regulations requiring the proof of disability to be made by an officer in command, and Captain Van Horne being dead, and the other officers on distant posts on duty, the petitioner has been unable to supply this defect. The difficulty and expense of getting depositions and proof from the subordinate officers would preclude the petitioner from complying with the office requirements. Two of the persons present at the time of the occurrence and saw it testify as to the fact, and their testimony is corroborated by the surgeon's certificate, and his discharge from the service for disability.

Your committee have no doubt of the facts as set forth in the petition, and they therefore report the accompanying bill, and ask for it a favorable consideration.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 365.

LEOPOLD SCHNEIDER.

[To accompany Bill H. R. No. 599.]

APRIL 6, 1860.

Mr. BRABSON, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Leopold Schneider, report:

That they have carefully examined the papers and evidence in the case, and find that the petitioner was a private in the company commanded by Captain Bainbridge in the war with Mexico; that while in the line of his duty, and in obeying the orders of his superior officer, he received an injury, from which he still suffers. The department so far recognized his claim as to grant him bounty land, but rejected, for some technicality, his application for an invalid pension. The assistant surgeon general certifies that the petitioner was a private in the Mexican war, and that he was discharged on a surgeon's certificate at Fort Monroe for disability; and that he is, in consequence of such disability, disabled one-half. Your committee therefore concur in reporting a bill granting a pension at half the monthly pay of a private in the army.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 366.

ROBERT PURCHASE.

[To accompany Bill H. R. No. 601.]

APRIL 6, 1860.

Mr. POTTER, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of Sarah Purchase, wife of Robert Purchase, a soldier of the revolutionary war, asking that he may be placed upon the pension roll of revolutionary soldiers, report:

That it appears from the evidence produced before the committee that Robert Purchase was a soldier of the revolutionary war, and served as a musician for a period of more than two years. This is very satisfactorily shown by the affidavits of two persons who were his neighbors, and knew him during the war, and one of whom served with him during a portion of the period of his service. This latter witness swears that he has no doubt that he served from August, 1776, during the war, as he saw him at different times in the service until the close of the war; that he served with him in New Jersey and New York; that the said Robert Purchase was in the battle of Long Island, and that they were together in the battles of Stillwater and Saratoga.

It further appears that the said Robert Purchase is now over one hundred years old, and so infirm in mind and memory as to be incapable of making the sworn declaration required under the rules of the Pension office, and hence the application is necessarily made to Congress on his behalf.

The reason assigned in the petition why no application has heretofore been made by the said Robert Purchase for a pension is that until recently he has enjoyed all the necessaries of life without aid from the government, but reverses have occurred in his old age, and he and his wife now require more for their support than their means afford.

Your committee believe that the said Robert Purchase is fully entitled, under the act of June 7, 1832, to a pension at the highest rate per year given to a musician by said act. They therefore report a bill granting him such pension.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 367.

HENRY F. BOWERS.

[To accompany Bill H. R. No. 602.]

APRIL 6, 1860.

Mr. FLORENCE, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Henry F. Bowers, report:

That said Bowers was a private of marines, and enlisted on the 23d day of January, 1853, and was discharged by surgeon's certificate on the 20th April, 1855; that his disability was caused by inflammation of the eyes, produced by standing guard whilst on board the receiving ship Union, at the Philadelphia navy yard. Since his discharge, as aforesaid, he has become blind. Surgeon G. R. B. Horner, of the United States navy, certifies to the exposure of Bowers whilst standing guard, and also certifies to the fact that his vision is now permanently impaired by reason of that exposure, and that he is in consequence disabled three-fourths. Surgeon John O. Barclay, of the United States navy, certifies that at the time Bowers entered the service he was a sound, healthy man in every respect. The committee are of opinion that he is entitled to a pension of eight dollars per month, to date from the 25th day of January, 1858. They report a bill.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 368.

JOHN PERRY AND OTHER CHILDREN OF MARGARET PERRY.

APRIL 6, 1860.—Ordered to be printed.

Mr. POTTER, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of John Perry, for himself and other surviving children of Margaret Perry, deceased, widow of John Perry, for arrears of pension due said Margaret, submit the following report:

That the petition states that John Perry served as an artillery artificer in the State of Pennsylvania during the war of the revolution; that the only evidence furnished is a copy of a certificate from the adjutant general's office of Pennsylvania of payment to one John Perry, an artillery artificer.

There being no proof of service being rendered, or of the identity of the petitioner's father with the John Perry to whom the certificate was issued, your committee recommend that the prayer of the petitioners be not granted.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 369.

ANDREW J. TURK.

APRIL 6, 1860.—Ordered to be printed.

Mr. HALL, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Andrew J. Turk, report:

The petitioner alleges that he was accidentally wounded by a bayonet in the hands of a fellow-soldier in the whiskey insurrection in Pennsylvania in 1794. It is only proved by the naked statement (not sworn to) of the petitioner, and by the hearsay statements of one or two others. Your committee deem the evidence, if evidence it can be called, of too vague a character to warrant a favorable report, even if the "whiskey insurrection" should come under the list of wars of the United States, the serving in which would entitle the soldier to a pension. They ask to be discharged from the further consideration of the petition.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 370.

EBENEZER HITCHCOCK.

APRIL 6, 1860.—Ordered to be printed.

Mr. HALL, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions make the following adverse report in the case of Ebenezer Hitchcock:

That the claim of the petitioner is for back pay, and that even that is sustained solely by the statement of the petitioner; but in accordance with a rule adopted by this committee, they are unable to report a bill granting back pension, and therefore ask to be discharged from the further consideration of the petition.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 371.

C. M. REEVES.

APRIL 6, 1860.—Ordered to be printed.

Mr. FOSTER, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of C. Mellville Reeves, asking a pension, report:

That the petitioner alleges that he enlisted for five years, and was entitled, for extra gallant services during the war with Mexico, to a commission as an inferior officer. That he was recommended for such, but by the delay and neglect of the commanding officer did not obtain it, and now asks Congress to grant him a pension for life. He avers that he participated in several of the battles in Mexico, but, fortunately for him, received no wound or other casualty.

Your committee, in view of all the facts, see no reason why the petitioner should be granted a pension, and ask to be discharged from the further consideration of the subject.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 372.

THOMAS SATTERLEE.

APRIL 6, 1860.—Ordered to be printed.

Mr. FOSTER, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom were referred the petition and papers of Thomas Satterlee, asking a pension, report:

That they have examined the papers of the petitioner, and see no satisfactory evidence that he is entitled to a pension. The petitioner avers that he lost his left thumb and received some injuries during the war of 1812, and while in the service, and now asks a pension. No part of the evidence shows that these casualties occurred in the service, or that he is disabled in consequence. Your committee therefore ask to be discharged from the further consideration of the subject.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 373.

SILAS STEVENS.

APRIL 6, 1860.—Ordered to be printed.

Mr. FOSTER, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Silas Stevens, asking a pension, report:

That it appears the petitioner enlisted in the army during the war of 1812, and was marched to Fort Meigs; that on the way he was taken sick and discharged as unfit for duty, and returned home. There is no satisfactory proof that his sickness then had resulted in any permanent disability, or that he was made less able to perform manual labor. It is given in evidence that he is a worthy man. Your committee are constrained to say that they see no sufficient reason why his prayer should be granted, and ask to be discharged from the further consideration of the subject.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 374.

JOHN BUTLER—WIDOW OF.

APRIL 6, 1860.—Ordered to be printed.

Mr. FOSTER, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Charlotte Butler, widow of John Butler, asking a pension, report:

That nothing accompanies the petition of the petitioner; and from the facts as set forth therein, your committee would not feel authorized to grant the prayer.

Your committee therefore ask to be discharged from the further consideration of the subject.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 375.

NATHANIEL WILBURN.

APRIL 6, 1860.—Ordered to be printed.

Mr. FOSTER, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom were referred the petition and papers of Nathaniel Wilburn, asking a pension, report:

That they have examined all the papers in the case, and there is not a line of proof that the petitioner was wounded in the line of his duty, or while in the service of the United States. The committee therefore ask to be discharged from the further consideration of the subject, and ask the concurrence of the House.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 376.

JOHN R. TUCKER.

APRIL 6, 1860.—Ordered to be printed.

Mr. FOSTER, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of John R. Tucker, asking a pension, report:

That the petitioner, John R. Tucker, bases his prayer solely upon the fact that his father was killed in 1813 at the battle of Fort Meigs. As the petitioner is of full age, he is not entitled to a pension, and your committee ask to be discharged from the further consideration of the subject.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 377.

DANIEL DOLAND.

APRIL 6, 1860.—Ordered to be printed.

Mr. FOSTER, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Daniel Doland, asking arrears and an increase of pension, report:

That upon the examination of the petition it appears the petitioner has obtained a pension at the rate of eighty-one dollars per annum. The petitioner asks that it be increased to ninety-six dollars per annum, and that arrears of pension be paid him from time of disability. He does not allege that there is an increased disability. Your committee reluctantly reject the prayer of the petition, and ask to be discharged from the further consideration of the subject.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 378.

ANTOINE ROBIDEAUX.

APRIL 6, 1860.—Ordered to be printed.

Mr. FOSTER, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Antoine Robideaux, make the following report:

That in the case of the petition of Antoine Robideaux, the petitioner is now receiving a pension at the rate of sixteen dollars per month, and they cannot think, from the evidence, that it is a case requiring an increase. They therefore ask to be discharged from the further consideration of the said petition.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 379.

JAMES S. ROWLAND.

APRIL 6, 1860.—Ordered to be printed.

Mr. FOSTER, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom were referred the petition and papers of James S. Rowland, a soldier in the war with Mexico, asking a pension, report:

That the papers filed in this case do not present the proof necessary to enable your committee to come to the conclusion that the petitioner, James S. Rowland, is entitled to a pension by reason of a disease contracted in the line of duty. Your committee do not feel authorized to recommend the passage of a bill upon a statement of facts, however true they may be, based upon the statement of a petitioner, unless supported by some other reasonable proof. This is wanting in the present case.

Your committee therefore ask to be discharged from the further consideration of the subject.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 380.

SAMUEL JANUARY.

APRIL 6, 1860.—Ordered to be printed.

Mr. FOSTER, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom were referred the petition and papers of Samuel January, asking a pension, made the following report:

Your committee have carefully examined the petition and papers in the case of Samuel January, and find no proper proof of the injury alleged to have happened to him. His own petition simply states, that while on a scout he sprained his ancles in jumping across a gully. This is not supported by a line of testimony from any other person, much less that it happened in the line of his duty.

Your committee, therefore, ask to be discharged from the further consideration of the subject.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 381.

EDWARD HARDESTY.

APRIL 6, 1860.—Ordered to be printed.

Mr. FOSTER, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom were referred the petition and papers of Edward Hardesty, asking a pension, report:

That they have duly considered the petition, and there being no proof but the averment of the petitioner himself, your committee ask to be discharged from the further consideration of the subject.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 382.

ISAAC ALLEN.

APRIL 6, 1860.—Ordered to be printed.

Mr. FOSTER, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Isaac Allen, report:

That from the evidence it appears that the petitioner was half disabled, and has received a pension at half pay, and is now receiving the same. The petitioner asks that it be increased to $8 per month, but fails to show, or even allege, that there is an increased disability, but bases his claim merely upon poverty and old age. Your committee are reluctantly compelled to reject the claim, and ask to be discharged from its further consideration.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 383.

THOMAS COWARD.

APRIL 6, 1860.—Ordered to be printed.

Mr. FOSTER, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Thomas Coward, an officer on board a privateer during the war of 1812 *with Great Britain, asking a pension, make the following report:*

The petitioner prays for a pension, as he alleges, on account of a wound in the leg and breast. Not a line of proof accompanies the petition to support the application, not even a surgeon's certificate that he has a wound of any kind.

Your committee, therefore, ask to be discharged from the further consideration of the subject.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 384.

CONFIRMATION OF A PRIVATE LAND CLAIM.

APRIL 6, 1860.—Ordered to be printed.

Mr. BLAIR, from the Committee on Private Land Claims, made the following

REPORT.

The Committee on Private Land Claims, to whom was referred the memorial of the City of New Orleans, praging for the confirmation of title to two hundred and twenty-seven thousand eight hundred and fifty-three acres of land in the State of Louisiana, having had the same under consideration, submit the following report:

The memorial sets forth that ninety thousand acres of the land in question was granted by Morales, governor general of Louisiana and West Florida, to Don Louis de Clouet and Don Alexander de Clouet, in the months of October and November, 1803; that one hundred and twenty thousand acres were, in the month of October of the same year, granted by the same officer to Don Jeronimo La Chiapella; that forty thousand acres were granted, on the 13th October, 1803, to Don Juan Delassosa; that, on the 5th of March, 1806, Don Thomas Estevan granted 2,700 acres to John McDonogh, and the remaining 2,100 acres were acknowledged by the Spanish officer last named to be vested in Philip Robinson on the 20th January, 1804, by virtue of a settlement made in 1797.

These grants were all made by the Spanish authorities after the retrocession of the province of Louisiana by Spain to France, and even after the treaty of Paris, April 30, 1803, by which the United States acquired the title; and it is admitted that if the lands embraced in the grants do lie within the territory acquired by the United States from France under that treaty, no title passed to the grantees; and, consequently, the devisees of John McDonogh would have no claim for the confirmation of title prayed for in the memorial. The lands are situated in that part of the State of Louisiana embraced between the rivers Mississispi and Perdido, and it is alleged by the memorialist that this portion of Louisiana was not acquired by the United States from France by the treaty of 1803, but was part of the Territory of West Florida, which was acquired from Spain by the treaty of 1819.

To what power, then, did the territory between the Mississippi and Perdido belong at the date of these grants?

At the commencement of the war of 1756, France had undisputed possession of the province of Louisiana on both sides of the Mississippi, and Spain at the same time owned Florida, the common boundary being the Perdido river. By the treaty of February 10, 1763, between Great Britain, France, and Spain, France ceded to Great Britain the river and port of Mobile and all her possessions east of the Mississippi, except the Island of New Orleans; Spain, on her part, ceded Florida to Great Britain, and France, by a separate treaty, kept secret, on the same day, (as generally understood,) ceded the residue of Louisiana to Spain.

France, then holding Louisiana as far east as the Perdido, ceded a part to Spain, to wit: the Island of New Orleans and the part west of the Mississippi, and the remainder east of the Mississippi and Iberville to Great Britain; and Great Britain acquiring Florida from Spain and uniting it with that part of Louisiana east of the Mississippi and Iberville, divided the whole acquisition into East and West Florida. Spain subsequently conquered the Floridas from Great Britain, and her conquest was confirmed to her by the treaty of Versailles of 3d September, 1783, by which Great Britain ceded to her East and West Florida, under which names the country continued to be governed by the crown of Spain. The King of Spain, (thus owning the Floridas and Louisiana both,) on the 1st October, 1800, by the treaty of St. Ildefonso, ceded to France the province of Louisiana, with the following description: "His Catholic Majesty promises and engages on his part to retrocede to the French republic, six months after the full and entire execution of the conditions and stipulations relative to his royal highness the Duke of Parma, the colony or province of Louisiana, with the same extent that it *now has in the hands of Spain*, and that it had when France possessed it, and such as it should be after the treaties subsequently entered into between Spain and the other states."

On the 30th April, 1803, by treaty between France and the United States, the First Consul of the French republic, reciting the treaty of St. Ildefonso, ceded to the United States "the said territory, with all its rights and appurtenances, as fully and in the same manner as they have been acquired by the French republic in virtue of the above-mentioned treaty with his Catholic Majesty." The United States subsequently received from France a surrender of Louisiana in the same indefinite language; and immediately there arose a controversy between the government of the United States and Spain on the construction of the treaty of St. Ildefonso, which lasted for sixteen years.—Spain asserting the Mississippi and Iberville as the eastern boundary of Louisiana, and the United States maintaining that the province extended as far east as the Perdido.

If the treaty had designated the province by metes and bounds, there could have been no difficulty in its construction. Or if it had designated it simply as "Louisiana, as it now is in the hands of Spain," there could have been no difference of construction; for at the date of the treaty the territory west of the Mississippi was known as Louisiana, whilst that immediately east was held as West Florida.

But it was further described as the Louisiana such as it was held by France when she possessed it, and that was held by the United States to carry it to the Perdido. This construction of the treaty was proclaimed by the government of the United States not only in all her diplomatic correspondence with the Spanish government, but by positive acts of sovereignty, among which may be mentioned the act of 1812, extending the limits of the State of Louisiana over a part of the disputed territory, including the lands embraced in the petition of the memorialist, and the admission of Alabama in 1819, before the ratification of the treaty of that year with Spain for the acquisition of Florida. This famous controversy was finally closed by the treaty of 1819, ratified February 22, 1821, between Spain and the United States, whereby the King of Spain ceded all the territory which belonged to him to the eastward of the Mississippi, known by the name of East and West Florida. Whilst Spain claimed, as we have seen during the controversy, that West Florida extended to the Mississippi, such phraseology was used in the treaty as to exclude the inference that the United States in any way recognized the validity of the claim; the cession covering only the territory *that belonged* to the King of Spain. The memorialist now asks us at this day to reopen this whole question, and reverse the uniform action of the government, to repudiate all our claims as pretensions, and all our public acts of sovereignty over the territory in question as usurpations.

The committee are not insensible to the force of the arguments presented by the memorialist to establish the correctness of the Spanish construction of the treaty of St. Ildefonso. It is as strong, and perhaps stronger, than that of the Spanish government in support of the same position; but they deem it inexpedient at this day to reconsider a question which they regard as settled by the action of the government, so far as any political question can be settled. Inasmuch, then, as the committee are of opinion that the grants in question are within the territory of Louisiana, as acquired from France by the treaty of April 30, 1803, they are adverse to their confirmation. They were made by Spain after she ceded her title to France, and after France ceded to the United States, when she had no title to, or rightful dominion over, the territory; and are within the provisions of the 14th section of the act of March 26, 1804, which enacts "that all grants for lands within the territories ceded by the French republic to the United States by the treaty of April 30, 1803, the title whereof was at the date of the treaty of St. Ildefonso in the crown government or nation of Spain, and every act and proceeding subsequent thereto, of whatsoever nature, towards the obtaining any grant, title, or claim to such lands, and under whatsoever authority transacted or pretended, be, and the same are hereby declared to be, and to have been from the beginning, null, void, and of no effect in law or equity."

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 385.

WILLIAM A. JOHNSON.

APRIL 6, 1860.—Ordered to be printed.

Mr. FLORENCE, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of William A. Johnson, report:

That they have examined the proofs in the case, and find that the petitioner was an ordinary seaman, and that while in the line of his duty he contracted a disease, from the effects of which he became two-thirds disabled, and was discharged. He is now receiving a pension at the rate of six dollars per month, full pay for ordinary seamen. The petitioner now shows full disability, and asks for increase of pension; but as he is already receiving full pay for entire disability, your committee concur in the opinion that the prayer of the petitioner ought not to be granted, and ask to be discharged from the further consideration of the case.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 386.

J. L. HARPER.

APRIL 6, 1860.—Ordered to be printed.

Mr. FLORENCE, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom were referred the claim and petition of J. L. Harper, an invalid pensioner, for an increase of his pension, report:

That they have examined the proofs and papers transmitted from the Pension department, and find that the petitioner was placed on the pension rolls on the 6th day of November, 1848, at $6 per month, to commence on the 11th day of January, 1847, for three-fourths disability. The petitioner does not show any increased disability, alleging only advanced age and poverty. Your committee are very reluctantly compelled to reject the prayer of the petitioner, and ask to be discharged from the further consideration of the petition.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 387.

JAMES H. BRADFORD.

APRIL 6, 1860.—Ordered to be printed.

Mr. FENTON, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of James H. Bradford, report:

That they have had under consideration the petition of James H. Bradford, asking for *arrears* of pension; that it appears by the papers that they were first referred to the Committee on Pensions December 17, 1838, and from time to time down to the present time, in several cases with adverse reports; that while your committee do not doubt that the claim is meritorious, and has been pursued with a pertinacity deserving of success, they must decline to grant the relief asked by the petitioner, trusting that all such cases may be fully adjudicated by a general law, to which they have repeatedly referred in similar reports.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 388.

ENOCH S. MOORE.

APRIL 6, 1860.—Ordered to be printed.

Mr. FENTON, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions to whom was referred the petition of Enoch S. Moore, report:

That from the evidence in the case it appears the petitioner is now receiving a pension for injuries received in the military service of the United States; that his name was erroneously entered on the roll of the New York militia as a deserter; that he failed to receive a pension on his first application on that account; that subsequently he produced satisfactory evidence that instead of having deserted, he was sick and absent on furlough. A bill was passed in 1854, correcting said roll, and was approved and became a law in December of that year, and he now receives an invalid pension for full disability. He asks for a full pension from the time of the erroneous entry of desertion on said roll to the commencement of his present pension, and interest at six per cent. For reasons given in other adverse reports on applications for back pay, your committee ask to be discharged from the further consideration of this claim, believing that their bill for the back pay of invalid soldiers will render exact justice to this class of claimants.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 389.

HENRY MILLER.

APRIL 6, 1860.—Ordered to be printed.

Mr. FENTON, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Henry Miller, report:

That from the evidence in the case it appears that the petitioner had his leg amputated in 1817, on account of an injury received in the war of 1812; that the department has allowed him a pension since 1850. The petitioner asks for a pension from the time of the amputation of his leg to the date of his present pension. For the reasons stated in other reports, viz: that your committee are preparing a bill, general in its character, intended to give relief to this class of applicants, they ask to be discharged from the further consideration of this application.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 390.

HECTOR ST. JOHN BEATLEY.

APRIL 6, 1860.—Ordered to be printed.

Mr. FENTON, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Hector St. John Beatley, report:

That the petitioner asks for a pension dating from the date of his application to the Pension office, August 12, 1842, to the date of his present pension, April 5, 1845. While your committee do not doubt that the claim is meritorious, and that he should receive a pension for that time, your committee believe that class of pensions should come under a general law granting back pay, which they are maturing. They have therefore adopted a rule to reject applications that come before them for special legislation for that class of claims. They therefore ask to be discharged from the further consideration of the petition of the said Beatley.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 391.

WILLIAM WALTON.

APRIL 6, 1860.—Ordered to be printed.

Mr. STOKES, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the case of William Walton, beg leave to report:

The petitioner asks for arrears of pension back to 1828. He is now receiving a pension. Under the rule adopted by this committee, we concur in rejecting the claim, trusting a general bill we are maturing will meet the just demands of these old soldiers. Your committee ask to be discharged from the further consideration of the petition.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 392.

CATHARINE WELDING.

APRIL 6, 1860.—Ordered to be printed.

Mr. STOKES, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Catharine Welding, report:

That they have examined the papers presented to them in this case, from which it appears that the only proof in the matter is the said petition of Catharine Welding, and her affidavit. She only knows that her husband was in the revolutionary war from having heard him say so. There is no roll on file of any such regiment as she alleges that her husband served in. The Commissioner of Pensions refused her application for bounty land for the reason that she failed to identify as the wife of her alleged husband, and also to prove that he was in the revolutionary war. And for the same reason your committee are of the opinion that the prayer of the petitioner ought not to be granted, and ask to be discharged from its further consideration.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 393.

ELLEN BOWIE.

APRIL 6, 1860.—Ordered to be printed.

Mr. STOKES, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Ellen Bowie, report:

That they have examined all the papers and proofs in the case, from which it appears that she is the wife of Benjamin Bowie, an invalid soldier, deceased, only by her own unsupported petition; that the said Benjamin Bowie filed his application in the Pension office for a pension in 1857. The Pension Commissioner refused to allow his claim, for the reason that there was no proof from the roll or *any other source* showing that his disability was caused while in the line of his duty. His name does not even appear on the roll of the company he alleges to have served in, &c.

As the proof was not sufficient to justify this committee to recommend a bill if her husband were living, they cannot grant the prayer of the petitioner, and ask to be discharged from the further consideration of the petition.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 394.

PROTEST OF THE PRESIDENT AGAINST CERTAIN PROCEEDINGS OF THE HOUSE OF REPRESENTATIVES.

APRIL 9, 1860.—Ordered to be printed.
APRIL 10, 1860.—The further consideration of the subject postponed till Monday next, April 16.

Mr. HICKMAN, from the Committee on the Judiciary, made the following

REPORT.

The Committee on the Judiciary, to whom was referred the special message of the President of the United States to the House of Representatives, beg leave to submit the following report:

On the 5th day of March last Hon. John Covode, a representative in Congress from the State of Pennsylvania, submitted, and the House of Representatives adopted, the following resolutions:

"*Resolved*, That a committee of five members be appointed by the Speaker for the purpose of investigating whether the President of the United States, or any other officer of the government, has, by money, patronage, or other improper means, sought to influence the action of Congress, or any committee thereof, for or against the passage of any law appertaining to the rights of any State or Territory; also to inquire into and investigate whether any officer and officers of the government have, by combination or otherwise, prevented and defeated, or attempted to prevent or defeat, the execution of any law or laws now upon the statute books, and whether the President has failed or refused to compel the execution of any law thereof; that said committee shall investigate and inquire into the abuses at the Chicago and other post offices, and at the Philadelphia and other navy yards, and into any abuses in connexion with the public buildings and other public works of the United States.

"*And resolved further*, That as the President, in his letter to the Pittsburg centenary celebration of the 25th November, 1858, speaks of the employment of money to carry elections, said committee shall inquire into and ascertain the amount so used in Pennsylvania, and any other State or States; in what districts it was expended, and by whom and by whose authority it was done, and from what source the money was derived, and to report the names of the parties implicated; and that for the purpose aforesaid, said committee shall have power to send for persons and papers, and report at any time."

The message comes as a protest against this action of the House. The President complains that he has been "abused," and that the consti-

tutional rights and immunities of the Executive have been violated in his person. The material positions assumed in the communication are substantially embraced in the following propositions:

1. That the House of Representatives possesses no power under the Constitution, except as an impeaching body, to accuse the President of the United States, or any other officer of the government.

2. That the first recited resolution is an accusation of high crimes and misdemeanors against the President, and that his accuser has been constituted one of his judges.

3. That the charge is too vague and general.

4. That there is danger under such a precedent of an aggrandizement of the legislative, at the expense of the executive and judicial departments.

In consideration of the high source from which the manifesto proceeds, the committee prefer to confine themselves to an examination of the postulates of the paper, however obnoxious to criticism its general tone may be on the score of taste and temper. But they cannot restrain an expression of their deep regret that an officer who prides himself upon the fact that "the people have thought proper to invest him with the most honorable, responsible, and dignified office in the world," and who declares he feels "proudly conscious there is no public act of his (my) life which will not bear the strictest scrutiny," and that he defies "all investigation," should forget, amid the surroundings of place, and power, and flattery, that he is but the servant of that same people, and that he should shrink back in anger or terror from a simple inquiry into his stewardship. This is the first time under the republic a Chief Executive has left a recorded admission that he has been made oblivious of the origin and ephemeral character of his position by the revelries of its enjoyment. To distinguish such conduct by approbation would be to sanction kingly prerogative, and to proclaim that rightful rule came "by the grace of God," and not from the confidence of men. The nation, always charitable in the interpretation of acts and motives, is not prepared to overlook such a delinquency.

The President of the United States, under the Constitution, possesses neither privilege nor immunity beyond the humblest citizen, and is less favored in this respect than senators and representatives in Congress. Article 1, section 6, reads: "They (the senators and representatives) shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same." No such exemption is made in behalf of the Executive or any other officer of government. The conduct of the President is always subject to the constitutional supervision and judgment of Congress; whilst he, on the contrary, has no such power over either branch of that body. He is left, under the law, without shield or protection of any kind, except such as is borne by all. He is as amenable for all his acts after inauguration as before. He can make no plea which is denied to any other citizen, and is subject to the same scrutiny, trial, and punishment, with the proceedings, hazards, and penalties of impeachment superadded. The President and the citizen

stand upon equality of rights. The distinction between them arises from an inequality of duties. Wherever the conduct of the latter is open to inquiry and charge, that of the former is not the less so. The President affirms, with seeming seriousness, in comparing himself with the House of Representatives, that, "as a co-ordinate branch of the government, he is their equal." This is denied in emphatic terms. He is "co-ordinate" but not coequal. He is "co-ordinate," for he "holds the same rank," but he is not coequal, for his immunities and powers are less. The members of the House may claim a privilege, whether right or wrong, which he cannot, and the executive or law-executing power must always be inferior to the legislative or law-making power. The latter is omnipotent within the limits of the Constitution; the former is subject not only to the Constitution, but to the determinations of the latter also. To repeat the point: the President is not, in any respect, superior to the citizen, merely because he is bound to discharge more numerous duties; and he is not coequal with that branch of government which helps to impose and define those duties. The fact that he holds a limited veto over the legislation of Congress cannot affect the soundness of the views here briefly presented. His claim to "legislative capacity," in other words, to possess legislative power, will scarcely be conceded in view of article 1, section 1, of the Constitution, declaring that, "All legislative powers herein (therein) granted shall be vested in a Congress of the United States, *which shall consist of a Senate and House of Representatives.*"

The President, it will be observed throughout his message, assumes that the resolution to which he makes reference charges him with the commission of high crimes and misdemeanors. This was necessary to the argument he has advanced. It is for such charges only the House has the power of impeachment. The *gravamen* of his complaint is, that the accusations are of such a nature as, if true, would subject him to an impeachment, and that the House has proceeded to pass upon them, or is moving to pass upon them, through a form of proceeding not authorized by the Constitution. Herein lies the fallacy, and that, which, unexposed, might operate as the deception of the plea. If this were, in truth, *a charge* against the President, calling for the form of trial prescribed by the Constitution, then the determinations of this House might possibly be open to animadversion. Unfortunately, for the attempted defence of that officer, there is no *charge* made of any grade of offence calling for trial of any kind. It is a mere *inquiry* that is proposed. The language of the resolution may be cited as the best proof. The committee raised is "for the purpose of *investigating* whether the President of the United States, or any other officer of the government has, by money, patronage, or other improper means, sought to influence the action of Congress, or any committee thereof," &c.; also "to *inquire into and investigate* whether any officer and officers of the government have, by combination or otherwise, prevented and defeated, or attempted to prevent and defeat, the execution of any law or laws," &c.; and "whether the President has failed or refused to compel the execution of any laws," &c. If no criminality is alleged, but, on the contrary *an investigation or inquiry*, alone is pro-

posed, the question may be asked, with ruling force and emphasis, what has the House to do with the law of impeachment? The resolutions do not contemplate a judgment, and therefore there can be no formal trial under them. But, admit charges proper for impeachment were made, would the House be bound to submit the matter to any particular committee and allow the accused a cross-examination, as the President seems to suppose? By no means! The Constitution prescribes no rules for the House, but it is left perfectly free to adopt its own. It may refer the charges to a standing committee, or a select committee, or it may proceed without the intervention of either. It may allow cross-examination, or deny it, as to its members may seem most proper at the time. The precedent set in the case of Judge Peck, upon which great stress is laid, cannot take away the full discretion allowed by the Constitution, nor make the law either shorter or narrower than it is written. In such a case each House of Representatives will determine for itself its mode of procedure without suggestions from a "co-ordinate," and rely upon the highest law as its charter. There is no judge presiding over the representatives of the sovereign people of the sovereign States to teach and inculcate legal proprieties. When they shall permit even the President to do so, then there will be a law superior to the Constitution, and a discretion locked in chains.

The resolution of the Senate of the 28th of March, 1834, upon which the President seemingly had his eye in the preparation of his protest, presents a case very different from the present one. That body resolved as follows:

"That the President, in the late executive proceedings in relation to the public revenue, has assumed upon himself authority and power not conferred by the Constitution and laws, but in derogation of both."

The complaints made by President Jackson to this proceeding were, that the acts charged upon him constituted one of the highest crimes which that officer can commit, impeachable from its very nature. That the Senate, as his constitutional judges in such a case, not only accused, but found him guilty of the charge, without any opportunity on his part to defend himself. And Mr. Buchanan, January 16, 1837, speaking on the subject, declared that the Senate had transcended its constitutional power because the resolution charged an impeachable offence against the President. That criminal intent was involved in the charge, as it was to be presumed, from an illegal or criminal act.

The resolutions of the House, on the contrary, do not even imply censure, much less pass judgment. They propose an examination merely, such as may be instituted by any member of society against any other member of society, to test informally either honesty or respectability. And has it ever been conceived before that such a privilege—that of inquiry—does not pertain to every human being? The fact that such investigation may lead to the conclusion that the party against whom it is brought to bear is guilty of nefarious practices cannot affect the right; it is preliminary to accusation, trial, and judgment. So here it cannot be made an objection to the action of the House that evidence may thus be found tainting the official character of any or many officers of government. If it shall be found, in

executing the command of the resolutions, that the President is open to a direct charge of high crimes or misdemeanors, it will but prove the wisdom of the proceeding. Then, and not till then, may the party sought to be implicated demand the full hearing secured to him by the Constitution. As yet he is subject to the law of the *citizen;* hereafter, possibly, he may invoke the law of the *officer*.

It is proper to make this additional remark in reference to the protest of 1834—that it was not presented to the Senate during the consideration of the resolution. It was not till after a formal determination against him that the President remonstrated. Here the interposition comes to prevent all investigation.

The President esteems it "a violation of the principles of universal justice" that the member moving the resolution should have been appointed one of the committee provided for by it. His ten years of service as a component of this body, of which he reminds us, not to speak of his protracted senatorial career, ought to have enabled him to recall to mind the precedents of Congress in such cases. This is a new and startling objection, condemning, as it does, in terms of severe reproach, a practice in legislation coextensive with our national existence. Certainly it has been the practice to appoint the mover of a special inquiry chairman of the committee raised. Mr. Cushing, in his "Law and Practice" says: "on the occasion of the appointment to prepare articles of impeachment against Lord Melville, which had been ordered on the motion of Mr. Whitbread, that gentleman was first appointed one of the committee raised." A reason for this course is doubtless to be found in the presumption that the person proposing examination has grounds to believe it important, and is, on that account, the best qualified to conduct the proceeding.

The President likewise disapproves, in terms of severity, of the phraseology and scope of the resolution. His expression is: "It is as vague and general as the English language affords words in which to make it." If it be true, as before urged, that there is a general right to inquire into the conduct of private citizens and public officers, which may or may not look to accusation and trial, then the remark sinks to a cavil. Under such circumstances it is not necessary to apprise the individual upon whom the inquiry bears, of either the subject or object of inquiry. The first opportunity for him to require notice is in the legal proceeding which is to end in his acquital or condemnation. What would be thought of a rule of law requiring even a prosecutor to define his charge, and frame his indictment, without preliminary proceedings or opportunity to inform himself as to its true character? A bare suspicion would scarcely be regarded a defensive prudence. And in the case of an officer controlling millions of patronage, and an influence penetrating every city, town and hamlet of a vast country, it would be unsafe to assume informers and witnesses would volunteer against him, especially as favorites and beneficiaries would be the most likely to possess the knowledge needed in the ascertainment of the truth. For Congress to reach the conclusion to which the President would lead them, would be to practically settle forever that impeachments were obsolete, and that executive officers had the immunity of perfect irresponsibility.

Indistinctness and uncertainty must necessarily precede research. If it were otherwise, all investigation would be rendered useless. As far as bounds may be set for investigation, the resolution in question will compare favorably with that introduced into the Senate by Mr. Mason, December 5, 1859, bearing upon the invasion of Harper's Ferry. This will be readily admitted from a comparison of the two. The following is the resolution last referred to, passed by the Senate December 14, 1859, under which the mover was appointed chairman of the committee contemplated by it, and testimony is now being taken:

"*Resolved*, That a committee be appointed to inquire into the facts attending the late invasion and seizure of the armory and arsenal of the United States at Harper's Ferry, in Virginia, by a band of armed men, and report—

"Whether the same was attended by armed resistance to the authorities and public force of the United States, and by the murder of any of the citizens of Virginia, or of any troops sent there to protect the public property;

"Whether such invasion and seizure was made under color of any organization intended to subvert the government of any of the States of the Union; what was the character and extent of such organization; and whether any citizens of the United States not present were implicated therein, or accessory thereto, by contributions of money, arms, munitions, or otherwise;

"What was the character and extent of the military equipment in the hands or under the control of said armed band; and where, and how, and when the same was obtained and transported to the place so invaded;

"That said committee report whether any and what legislation may, in their opinion, be necessary on the part of the United States for the future preservation of the peace of the country, or for the safety of the public property, and that said committee have power to send for persons and papers."

Could there well be a more limitless field for experiment? It covers every foot of the country, if not the earth, and lays open every act and motive of every citizen of the United States to analysis, comment, and exposure. It is not deemed necessary to extend remark, as it is sufficient for the argument to propound the question: Where is to be found the doctrine of jurisprudence, or justice, or propriety which subjects the every-day life of every merchant, farmer, artisan, and laborer to such a test, and protects their servant, the President, from it?

Article 2 section 1 of the Constitution declares "the executive power shall be vested in a President of the United States of America." There is but one executive head or fountain, and but one executive responsibility, as there is but one legislative head, and one legislative responsibility. The President admits the propriety of inquiry by the Senate or the House into the conduct of his subordinates, but denies that his liability is as great as theirs. The accepted teachings of the executive, judicial, and legislative branches of the government are the opposite of this.

President Jackson, in his message of April 21, 1834, to the Senate,

explanatory of his protest of the 18th of April of the same year says: "Nor do I claim the right in any manner to supervise or interfere with the persons intrusted with such property or treasure, (the public money and property of the United States,) unless he be an officer whose appointment is, under the Constitution and laws, devolved upon the President alone, or in conjunction with the Senate, *and for whose conduct he is constitutionally responsible.*"

President Polk, of whose cabinet Mr. Buchanan was a member, during the 1st session of the 29th Congress, used this language: "If the House of Representatives, as the grand inquest of the nation, should at any time have reason to believe that there had been malversation in office by an improper use or application of the public money *by a public officer*, and should *think proper to institute an inquiry* into the matter, all the archives and papers of the Executive department, public and private, would be subject to the *inspection and control of a committee of their body,*" *&c.* The rulings of the Supreme Court have been in the same direction. In the cases of Wilcox *vs.* Jackson, and Williams *vs.* United States, it was decided that the law devolving particular duties upon the President, by name, was fulfilled by the discharge of those duties by his subordinates, on the ground that these subordinates were instruments through whom he acted and spoke. It can certainly not be necessary to transcribe what appears throughout the Journals of Congress, that each House has continually claimed and exercised the necessary power of inspecting, inquiring into, and supervising the different executive departments and operations of the government. If it be true that the close and intimate connexion insisted upon, exists between the President and others appointed by him and exercising executive trusts, the reason is not manifest why the management of the one should not be made as plain and patent as the other. The most rational and plausible conclusion at least would be that the pretentious tenets of the protest have been seriously weakened, if not destroyed, by the force of its admissions.

The necessity for the full and unrestricted exercise of the power in question is so overruling as to prevent its surrender:

1. With a view to impeachment.
2. For the purpose of legislation.
3 To protect the privileges of Congress.

The constitutionality, the legality, and the authorized expediency of the inquiry proposed by the resolutions being, as is believed, amply vindicated, no question remains in respect to it, except such as might address itself to the discretion of the House. If, by the proceedings to remedy a mischief, a greater mischief would be likely to follow, then a well-regulated prudence would indicate its abandonment. The President in his protest suggests such a danger, and rests his resistance upon it. It is thus expressed: "The whole proceeding against him justifies the fears of those wise and great men who, before the Constitution was adopted by the States, apprehended that the tendency of the government was to the aggrandizement of the legislative at the expense of the executive and judicial departments." If, indeed, fears of legislative aggrandizement should ever have existed, the cause of those fears is left in great obscurity. The history of the Consti-

tution, through all the stages of its formation, its adoption by the several States, and the conspicuous differences between the great political parties at the time, would seem to deny the existence of any such apprehension. The strong sentiment of the democratic party through its whole struggle with the federalists, until the election of Jefferson, was directly the reverse of the President's statement. In the convention which formed the Constitution, jealousy of the executive branch of the proposed government was as great, even, as the kindred jealousy against the probable encroachments of the federal government upon the independence and sovereignty of the separate States. In that body it was even proposed that the Executive should be removable by the legislature, without impeachment or conviction of high crimes and misdemeanors. As a further manifestation of that feeling, it was proposed that the Executive should be plural. Madison and Randolph urgently supported it as a measure of protection against the aggressions of the Chief Magistrate upon the rights of the co-ordinate branches of the government. Mr. Randolph, (governor of Virginia, and Attorney General under Washington,) speaking upon this subject, said: "The situation of this country is peculiar; the people are taught aversion to monarchy; all the constitutions are opposed to it: Why cannot three execute?" The ineligibility of the Executive after one term was also insisted upon, as a necessity to prevent usurpation. Jefferson declared his wish to be that the President should be elected for seven years, and be ineligible afterwards. Mr. Randolph also made use of this remarkable expression: "The Executives may appoint men devoted to them, and even bribe the legislature." Hamilton, after the adoption of the article of the Constitution relating to the Executive, addressing Governor Lewis, used a still more striking expression: "You nor I, my friend, may not live to see the day, but most assuredly it will come, when every vital interest of the state will be merged in the all-absorbing question of who will be the next President." So numerous are the proofs that the "wise and great men" of our earlier history entertained forebodings of the very opposite character to those which the President ascribes to them, that it is difficult to resist a disposition to attribute insincerity to the President to accomplish the purposes of his protest. The suspicion on the part of the people has become so great that they are continually reducing executive power. In many of the States the governor has become but a mere chief of police. This is not, however, to be attributed to legislative or judicial agency, but to the fact that chief executives so use their patronage as to produce a tendency to a centralization of power dangerous to the liberties of the people. The world is but a great battle-field for power; and if universal history teaches any lesson, it is this: that "power is always stealing from the many to the few;" that executive heads of nations absorb popular rights; and that all revolutions are on the part of the people, not to establish thrones, but to regain that which has been wrested from them by the throne. The citizen of the United States has reason to fear that which every other nation has suffered.

The committee, entertaining the views herein expressed, recommend the adoption of the following resolution:

Resolved, That the House dissents from the doctrines of the special message of the President of the United States of March 28, 1860;

That the extent of power contemplated in the adoption of the resolutions of inquiry of March 5, 1860, is necessary to the proper discharge of the constitutional duties devolved upon Congress;

That judicial determinations, the opinions of former Presidents, and uniform usage sanction its exercise; and,

That to abandon it would leave the executive department of the government without supervision or responsibility, and would be likely to lead to a concentration of power in the hands of the President, dangerous to the rights of a free people.

MINORITY REPORT.

Mr. HOUSTON presented the following minority report:

The undersigned member of the Judiciary Committee, to whom was referred the message of the President of the United States to the House of Representatives of the 28th March, 1860, having failed to agree with the majority of said committee, asks to submit the following as his report:

The framers of the Constitution of the United States have thought proper to confide to all the departments of the government the maintenance of the national honor and dignity, not only that confidence in our institutions may be thereby maintained at home, but that the position of our government amongst the nations of the earth may be in nowise impaired. And in depositing such trust, they have not omitted to place proper and just limitations upon the powers of each, in order that it may effectually combine with the others for the accomplishment of the end in view, and at the same time not encroach upon them. Thus is produced that equilibrium so necessary to harmony and efficiency, and which cannot be seriously disturbed without endangering the success of the whole plan.

"It is important, likewise, that the habits of thinking in a free country should inspire caution in those intrusted with its administration, to confine themselves within their respective constitutional spheres, avoiding, in the exercises of the powers of one department, to encroach upon another. The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism. A just estimate of that love of power and proneness to abuse it which predominates in the human heart is sufficient to satisfy us of the truth of this position. The necessity of reciprocal checks, in the exercise of political power, by dividing and distributing it into different depositories, and constituting each the guardian of the public weal against invasions by the others, has been evinced by experiments, ancient and modern—some of them in our own country and under our own eyes. To preserve them must be as necessary as to institute them. If, in the opinion of the people, the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance in permanent evil any partial or transient benefit which the use can at any time yield."—*Washington's Farewell Address.*

The undersigned regards it as a high and important duty of the House of Representatives to ferret out abuses and errors in the administration of the government, if abuses and errors exist, with a view as well to the punishment of the guilty as of providing a remedy by the enactment of such legislation as may be necessary to prevent their recurrence.

In the discharge of that duty, however, the House of Representatives should conform its action to the limitations and requirements of the Constitution. And while it has been the practice of the House to

give to such investigations much latitude when proposed in good faith, it is alike due to justice, to the dignity of the House, to the character of our government at home and abroad, that such action shall not be taken for purposes of oppression or for mere party advantages; that such movements shall not be made for the purpose of throwing discredit upon an Executive by encouraging or entertaining vague and slanderous imputations founded upon street rumors or irresponsible newspaper articles. That it has been so used as to amount to an abuse may with confidence be asserted, and the present case is one which should admonish the House that there is a possibility that these occasions, occurring so frequently of late, may already have done much, and may still do more, to weaken the confidence of the country in, and its respect for, the legislative as well as the other departments of the government. Congress should maintain its own dignity; but the most effectual mode of doing so is not by continued assaults upon other departments, or upon citizens of the country in public or private life. It weakens its own influence by the frequency and cheapness of these assaults, thus inviting assaults back again upon itself, and consequently impairing its capacity for good. In the language of the "father of his country," "but let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance in permanent evil any partial or transient benefit which the use can at any time yield."

By the Constitution of the United States the Executive is a separate, co-ordinate department of the government. The powers, duties, and responsibilities of the President are plainly and distinctly set forth in that instrument. His duties are executive, with legislative functions to the extent of his approval of bills passed by the two houses of Congress, which, in the contingency of his disapproval, do not become laws until again passed by a vote of two-thirds of each house.

The House of Representatives is one branch of the legislative department, whose concurrence with the Senate is essential to the enactment of a law. The Constitution makes the House the judge of the elections, returns, and qualifications of its own members; gives it the power to determine the rules of its proceedings, to "punish its members for disorderly behavior, and, with the concurrence of two-thirds, to expel a member." The departments of the government—executive, legislative, and judicial—are independent of each other, excepting in the cases in which by the terms of the Constitution it is declared otherwise. The President may be impeached by the House of Representatives, but must be tried by the Senate. The Senate has no power to institute an impeachment. By the provisions of the Constitution the House has "the sole power of impeachment," and the Senate "the sole power to try all impeachments." The same particularity marks the Constitution throughout in its distribution of powers between the different departments, which is also true of its distribution between the two branches of the legislative department.

The Senate cannot judge of the elections, returns, or qualifications

of the members of the House of Representatives. Nor can the House of Representatives so judge of the members of the Senate. Neither body has a right to expel a member of the other, or to punish such member for disorderly behavior in the house of which he is a member. The framers of the Constitution deemed it unwise to confer such power.

The undersigned does not claim for the President exemption from responsibility. The Constitution marks his responsibilities, and also devolves upon him many duties and obligations. He is bound to see that the laws are faithfully executed, and is sworn to preserve, protect, and defend the Constitution of the United States; and many other duties are enumerated in the Constitution. He is also liable to impeachment by the House of Representatives.

Article two, section four, of the Constitution provides: "The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors;" and, as has been stated in a preceding part of this report, the Constitution gives to the House the power of impeachment, but to the Senate the power to try impeachments; and the undersigned states with much confidence that there is no mode known to the Constitution by which either house of Congress has the power to inflict a punishment upon the President except the one of impeachment, as set forth in that instrument.

It is asserted that as the House of Representatives can examine into the conduct of its own members, and signify its disapprobation of such conduct by way of punishment, it has alike the constitutional authority to do the same as to the President or any civil officer of the United States. It is freely and fully conceded that the House may examine into any abuses or alleged abuses in the administration of the government for the purpose of bringing to punishment any civil officer of the United States who has been guilty of high crimes and misdemeanors, or of providing a remedy for what the legislature may regard as a defect in the existing laws. It is made the duty of each house of Congress to consider of, and act upon, legislative propositions, either to enact new laws or to amend or repeal old ones; and in discharging that duty, either can institute an investigation to learn the character, cause and extent of the evil which is proposed to be remedied; and in such examination the conduct of any officer of the government, high or low, that may have reference to such legislation, may be investigated, and the result reported to the house ordering the committee. But the proper limit upon even this power is, that it must be necessary to enable the house the better to perform its legislative duty.

Nor does the President in his message deny or controvert this proposition; on the contrary, he affirms it. And in such investigation the undersigned feels warranted in saying that every facility would be afforded a committee of either house to probe to the bottom any defects or abuses that might be alleged to exist.

The message also states that the power of the House to examine into charges against the President with a view to punishment, which can only be by impeachment, is unquestioned and ample.

The Constitution gives the House of Representatives the power to judge of the conduct of its own members, and punish them for disorderly behavior. It gives no such power over the President. True, it may impeach him for "treason, bribery, or other high crimes and misdemeanors," but it can impeach him for nothing else. Any behavior of the President, however disorderly, does not furnish grounds for his impeachment, unless it come within the provisions of the Constitution; and hence the House has no authority to punish him for it.

The correctness of this position was admitted in the debate in the House on the day the message was received, as the following extract will show:

"If this House proposed an impeachment of the President by one of its committees, the President's view would be correct. They have no power to do such a thing as that. They must present their impeachment, and the Senate must try it, if they propose to impeach the President But the question whether or not improper influences have been used by anybody to affect the legislation of the country is a proper subject for inquiry and investigation by the representatives of the people. It carries with it no penalty or the infliction of punishment."—*Mr. Grow.*

This extract is reproduced for the purpose of distinctly marking the admissions contained on it; the latter branch of it will be referred to again in this report. The Speaker fully admits that there is no constitutional mode of punishing the President except by impeachment. Observe his language: "If this House proposed an impeachment of the President by one of its committees, the President's view would be correct." But his argument is understood as intending to show that the proceeding under Mr. Covode's resolution is not an impeachment, but a mere investigation, to see whether improper influences have been used to affect legislation, which he says carries with it "*no penalty or the infliction of punishment.*"

In view of such admissions, a question very naturally arises as to the import of the term "*punishment.*" Happily, however, the House, by its uniform practice, has furnished the answer. The Constitution gives to the House of Representatives the power to "*punish its members for disorderly behavior*;" and in the exercise of that power it has given its understanding of that term, and has, in more instances than one, inflicted *punishment* upon a member by disapprobating his conduct. The Constitution does not define what punishment the House may inflict upon its members, except in one instance, when it provides that, with the concurrence of two-thirds, it may expel a member. The House was left to construe the term *punish*, as well as its powers under that term, and in the cases in which it has inflicted a punishment upon its members it has employed different modes of expression. In the case of Joshua R. Giddings, of Ohio, the House passed the following resolution:

"*Resolved*, That this House hold the conduct of the said member as altogether unwarranted and unwarrantable, and deserving the severe condemnation of the people of this country, and of this body in particular."

Here Mr. Giddings *was punished by the House.* Other analogous cases might be referred to, but it is regarded as quite unnecessary to

specify them, as the proposition seems too clear for controversy or doubt. The House, then, has fully settled that its *censure or disapprobation is a punishment.* It matters not in what language the disapprobation may be expressed, or in what terms it may be made known. Any formal resolve of the House for the *mere purpose* of expressing its disapproval of the conduct of a member or of an officer is a punishment.

Not only is it a punishment to vote a censure upon an officer—to condemn his conduct as such, but it is also a punishment, and a harsh one, to allow *vague* and *indefinite* charges to be *insinuated* against him, based upon no responsible statement; to have them referred to an *ex parte* committee for a *pretended* investigation, and allow that committee, composed in its majority of the most bitter and implacable enemies and persecutors of such officer, performing more nearly the duties of prosecutors than of judges, to report whatever *ex parte* evidence they may chance to procure. Such committee, instead of holding the scales in a fair balance, with a view to the ends of justice, will be far more likely to hunt up from the dregs of society disappointed seekers for place and for jobs, who have by profligate conduct rendered themselves bankrupt in purse and in character, and who seek revenge upon the officer and of such men make witnesses, and examine them in secret, without even the knowledge of the accused officer, report such swearing to the House, put it upon the records of Congress, and dignify it by calling it the report of a committee. Having given the accused officer no opportunity to be heard, not even to cross-examine the witnesses, and as if fearful that he might in some subsequent stage of the proceedings have an opportunity to make his defence, it is gravely suggested in argument that there the matter would be allowed to rest.

Any one, with a proper care for his own honor or reputation as a citizen or an officer, must regard it as a severe punishment thus to have obloquy cast upon him by those who deny him all right or opportunity of defence.

The executive and judicial departments, in the matter of impeachment, stand in the same relation to Congress. The same clause of the Constitution conferring the power to impeach the President, also confers the power to impeach the judges. The House of Representatives, then, has the sole power to impeach the judges, as it has to impeach the President, and in no other way can either be punished by either house of Congress. Will it be contended that the House of Representatives has any constitutional authority to institute an investigation into the conduct of the judges, except for impeachment or legislative purposes? Has it the right to institute an examination into the conduct and decision of the judges for mere speculative purposes? to defame the character of the judges, and bring the court into disrepute? Then, if the House cannot thus act towards the judges, how can it towards the President? The same power exists as to both. Investigations may be instituted looking to the impeachment of either, or to remedial legislation, and in either case the conduct of the President or the judges may alike be investigated. It may be argued that the important duties of the President and the magnitude of the inter-

ests of the people in his hands, justify their representatives in making such investigations; but the same would be true of the courts. Life, liberty, and property, upon which the courts are daily called to act, should be, and doubtless are, quite as important to the people as any matters coming within the jurisdiction of the executive department.

The undersigned proposes to call attention to the resolutions of Mr. Covode, which were adopted by the House on the 5th of March, 1860. His first resolution is in the following words:

"*Resolved*, That a committee of five members be appointed by the Speaker for the purpose of investigating whether the President of the United States, or any other officer of the government, has, by money, patronage, or other improper means, sought to influence the action of Congress, or any committee thereof, for or against the passage of any law appertaining to the rights of any State or Territory; also to inquire into and investigate whether any officer or officers of the government have, by combinaton or otherwise, prevented or defeated, or attempted to prevent or defeat, the execution of any law or laws now upon the statute-book; and whether the President has failed or refused to compel the execution of any law thereof; and that said committee shall investigate and inquire into the abuses at Chicago or other post offices, and at the Philadelphia and other navy yards, and into any abuses in connexion with the public buildings and other public works of the United States."

It is important that the object of this resolution should be ascertained. And what is it? Does it propose an impeachment? Certainly not; for if it had, the mover doubtless would have said so. Instead, however, of declaring that he intended an impeachment, he even denies that he makes any *charge* against the President. In remarks made by him in the House on the 28th of March last he said:

"o o o In the resolution which I offered I do not make the charge against the President. The President himself made the charge. He charges in his centenary letter to the people of Pittsburg that money has been used in carrying elections; and I stepped forward to investigate the matter, and to see who used that money."

"Mr. COVODE. Mr. Speaker, you will perceive that *there is no definite and distinct charge against the President*, but the President himself, as I stated, made a charge, and it was my wish to investigate the matter, and ascertain who had been guilty of this offence."

Other friends of the resolution argue that it is not intended as an impeachment, but only to see whether improper means have been used to influence the action of Congress. No one of its friends has been willing to avow that it looked to an impeachment; then it is but fair to ascribe to it no such object.

And yet the charges insinuated in the resolution are the precise offences mentioned in the Constitution for which the President may be impeached. The resolution directs that the committee inquire whether the President of the United States, or any other officer of the government, has by "money, patronage, or other improper means, sought to influence the action of Congress," &c.; or, in other words, whether the President has not attempted to bribe the members of Congress by the use of money. If these insinuations be true, then he should be impeached. The resolution, however, in its want of specifications, is unprecedented as an initiatory step to impeachment. Its insinuations—the mover denies that they are *charges*—are as vague as they can well be, and in that it violates the plainest principles of justice and law. There is no civilized country in which a citizen can be arraigned and put upon his trial for an alleged offence without having secured to him, by the law, proper information of the precise offence charged against him. He is entitled to know what he is required to

answer. The law, as well as justice, demands that the papers, the indictment or resolution, shall set forth his offence. Does the Covode resolution do that? It *insinuates* that the President has "by the use of money, patronage, or other improper means, sought to influence the action of Congress, or a committee thereof, for or against the passage of some law," &c. How vague and indefinite is this! When and where did the President make such attempt? What means did he use or attempt to use? Upon what member or members did he make the attempt? or with what committee or committees? and in relation to what bill or measure? These things, at least, should appear in the resolution, and why did they not? If there has been bribery, or any attempt at bribery, the mover of the resolution doubtless knew it. Then why did he not specify? For the reason that the insinuation is unfounded—that there is no truth in it. And hence, as none of the persecutors of the President had the boldness to make it as a direct charge, resort was had to the less manly mode of insinuation.

To base a prosecution, and arraign a citizen, who is either in office or out of office, upon such vague and indefinite accusations, even if they were presented as *charges*, is an outrage revolting to the sense of justice of all honorable men, and in this country will not be tolerated by even the most vindictive political opponent. Such are the rights of the citizen secured to him by the laws of the land, and administered through the instrumentality of the courts in all of the States. Why are they not also the rights of the President of the United States? Will he be denied rights so essential to the ends of justice, and which the laws secure to every other citizen? Can it be that a citizen who, by long and faithful service in the cause of his country—by a life, public and private, of the strictest integrity, whose character is free from just reproach—shall be denied rights granted and secured to every other citizen, merely because his walk has been such as to gain for him the confidence of his fellow-citizens, and because he has been by them placed in the most honorable political office known to the Constitution?

The undersigned regards it as appropriate to present an extract from a letter written by President Jackson, in January, 1837, to the chairman of a committee of the House of Representatives, asking it to be laid before that committee, in which he discusses the precise point presented in President Buchanan's recent message to the House. The views of that departed hero and statesman will be read with great interest by all who desire to arrive at just conclusions on the important issues growing out of the extraordinary movement of Mr. Covode in the House of Representatives. Speaking of a resolution which had but recently before the date of his letter passed the House of Representatives, directing an investigation into the condition and operation of the executive departments, as well as a resolution of the committee asking information of the President on the *charges*, and also of the vagueness of the charges that were insinuated in the resolution creating the committee, he said:

"For myself, I shall repel all such attempts as an invasion of the principles of justice as well as of the Constitution, and I shall esteem it my

sacred duty to the people of the United States to resist them as I would the establishment of a Spanish inquisition.

"If, after all the severe accusations contained in the various speeches of yourself and your associates, you are unwilling, of your own accord, to bring specific charges, then I request your committee to call yourself and your associates, and every other member of Congress who has made the general charge of corruption, to testify before God and our country whether you or they know of any specific corruption or abuse of trust in the executive departments; and if so, what it is. If you are able to point to any case where there is the slightest reason to suspect corruption or abuse of trust, no obstacle which I can remove shall be intervened to prevent the fullest scrutiny by all legal means. The offices of all the departments will be opened to you, and every facility furnished for this purpose.

"I hope, sir, we shall at last have your charges, and that you will proceed to investigate them, not like an inquisitor, but in the accustomed mode. If you either will not make specific accusations, or if, when made, you attempt to establish them by making freemen their own accusers, you will not expect me to countenance your proceedings. In the short period which remains of my official duty I shall endeavor, as I have heretofore endeavored, to fulfil the obligations of that oath of office by which I engaged 'to the best of my ability to preserve, protect, and defend the Constitution of the United States.' And for this and other reasons of the most solemn character, I shall, on the one hand, cause every possible facility consistent with law and justice to be given to the investigation of specific, tangible charges; and on the other, shall repudiate all attempts to invade the just rights of the executive departments, and of the individuals composing the same. If, after all your clamor, you will make no specific charges, or bring no proof of such as shall be made, you and your associates must be regarded by the good people of the United States as the authors of unfounded calumnies; and the public servants whom you have assailed will, in the estimation of all honorable men, stand fully acquitted."

The history of Congress discloses many applications to the House of Representatives for the impeachment of civil officers, and none of them justify the Covode resolution. In all of them the charges were required to be specific, and such as were not so were not entertained, and the House cannot justly depart from this practice.

If the resolution does not look to an impeachment, to what end does it look? If the insinuations contained in it be true, it is clearly the duty of the House to impeach; and if any member of the House believes them to be true, it is his duty—his sworn duty—to move an impeachment; and if he fail to do so, he is guilty of a palpable dereliction of duty. It cannot be that a representative discharges his full duty when he believes an officer of the government to be guilty of treason, bribery, or other high crimes and misdemeanors, without taking proper steps to have such officer punished as the Constitution provides; and if, on the other hand, such resolution be presented to the House by a member who believes its insinuations to be untrue,

such member justly merits the indignant scorn of an honest public for such flagrant betrayal of public trust.

This resolution cannot contemplate legislation. Its friends make no such claim for it, while the resolution itself forbids any such idea. What legislation could likely be enacted upon such report as this committee could make? Suppose it should report the charges to be untrue, what law would thereby become necessary? None. Suppose, however, that the committee should find that an attempt had been made by the President, with money, to bribe the members of Congress, what law should Congress then pass? No additional legislation would be required, for in that case the Constitution furnishes the most ample remedy—impeachment—and Congress would not have the constitutional power to change it. The Constitution provides how and for what offences the President of the United States may be impeached, and Congress could not add to the offences, or change the mode of trial or the character and extent of punishment.

It is a mistake to say that the investigation in the 34th Congress which resulted in the expulsion of some of its members was instituted without a distinct specific charge having been first made. By reference to the proceedings on that occasion it will be seen that while the resolution was pending, and before any vote had upon it, Mr. Paine, a representative from the State of North Carolina, rose in his place and said:

"I say now distinctly upon this floor that there is not an entire want of truth in the allegations contained in that article; that a distinct proposition has been made by a member of this House, and in regard to the Minnesota land bill, that $1,500 would be guaranteed to a member for his vote for that bill, and when the committee is raised, and I am called upon, I will give my evidence before the committee."

Mr. Paine made a positive and distinct charge, upon his own responsibility, and upon the charge thus made the resolution was voted and the committee ordered. If the same course had been pursued in the present case it would have been unobjectionable. If the resolution had made specific charges instead of vague insinuations, and the mover had said to the House that he even believed they were true, there would have been no opposition to it.

There is, however, but little analogy between an impeachment of an officer by the House and a proceeding by the House for the punishment of one of its own members. It is true the party accused has a right in either case to specific charges and a proper opportunity for his defence. The House can punish its members for disorderly behavior, and in the case of an offending member it has the *sole* power. It makes the charge, conducts the trial, pronounces the judgment, and inflicts the punishment. It has no such authority in an impeachment. In the case of an impeachment it investigates the charges, finds the impeachment, and sends its articles to the Senate, where the case is tried.

The undersigned asks attention to the following additional extract from the debate in the House on the President's message:

"What does the President of the United States gravely ask us to do in the message which has just been read? That this high judicial body shall find an impeachment upon mere rumor. *Shall we, upon the mere rumors which are circulating in the newspapers and upon the streets, find an impeachment?* The very necessity of the case implies that we have a right to

investigate all charges made in the public prints and elsewhere. If it is alleged that the President has been seriously and improperly connected with certain transactions, we have a right in this House to inquire into the probable truth of these things. If we find that they are probably true, then it is our duty to prefer articles of impeachment against the President at the bar of the Senate."—*Mr. Sherman, of Ohio.*

It is quite difficult to believe that an unbiased mind can assent to the propositions contained in the above extract. The undersigned had supposed, and yet believes it to be beneath the dignity of a grave legislative body, or a "*high judicial body*," to act or attempt to act "upon the mere rumors which are circulating in the newspapers and upon the streets." No case of impeachment has ever been instituted upon *mere newspaper* or *street rumor*, or *scandal;* and the undersigned is not aware that such an attempt has ever been made, unless the present be such an one. But if a House of Representatives should ever be so blinded by partisan feeling as to lose sight of its own proper dignity and self-respect, and institute an impeachment upon *mere street rumors*, such rumors should be so shaped in the resolution proposing the impeachment as to make a positive charge upon which the officer implicated could be tried, and if guilty, punished. The undersigned intends to say that if a rumor, however vague and irresponsible, is to be dignified by the notice of the House of Representatives, the officer accused has a right to demand the judgment of the proper tribunal.

Mr. Covode's second resolution is as follows:

"*And resolved further*, That, as the President, in his letter to the Pittsburg centenary celebration of the 25th of November, 1858, speaks of the employment of money to coerce elections, said committee shall inquire into and ascertain the amount so used in Pennsylvania, and any other State or States; in what districts it was expended, and by whom, and by whose authority it was done, and from what source the money was derived, and to report the names of the parties implicated; and that, for the purpose aforesaid, said committee shall have power to send for persons and papers, and to report at any time."

It will require but a brief examination to enable the House to understand its object. It cannot mean an impeachment, for it makes no charge. The House can only impeach *civil officers of the United States*, and *they* do not seem to come within the purview of the resolution. This being true, it is but reasonable to conclude that it has *some other object*.

It is even more absurd to suppose that this resolution looks to legislation. What legislation? Suppose money has been used in elections *within the States*. Can Congress, by law, prevent it? Can Congress pass a law to punish as a crime even the corrupt use of money in elections within the States? Such a position will hardly find an advocate in the House. To prevent such use of money is a matter of *State* jurisdiction, and must be suppressed by *State* laws, and not by congressional action.

The House, then, finds itself in this condition: it has ordered a committee of investigation, under the press of the previous question. No member was allowed to debate or to propose an amendment to the resolution, and in that extraordinary and unusual mode for such resolutions it was passed without explanation.

The committee has power to send for witnesses without regard to distance or expense; and in the exercise of that power it may, and

doubtless will, involve the government in the expenditure of thousands of dollars, when it is, in the judgment of the undersigned, beyond controversy, that no constitutional action by Congress is contemplated by the resolution. Its inquiries are directed to the use of money in elections *in the States*. When the resolution was pending no one was permitted to ask its meaning, and why such unprecedented inquiries should be made by the House, or what election was meant—whether that of President of the United States, or senators, representatives, governors, members of State legislatures, county, or city elections. It is so vague in its terms that nobody can understand the meaning of the resolution from its reading, and it fails to distinguish between the corrupt and legitimate use of money, or whether used by an officer or private citizen.

If the committee shall undertake to bring before the House and expose the legitimate transactions of private citizens, then will it transcend its authority; for even admitting that such would be the true construction of the resolution, the power does not follow; the House itself has no such rightful authority, and, of course, cannot delegate it to a committee. But will the House allow such construction of its resolution? And if such be its proper construction, then the question presents itself, whether it will allow such resolution to remain unrescinded, subjecting the private citizen to embarrassment and his private transactions to exposure, and for no good end—for nothing that Congress can accomplish calculated to advance the public interests; and, indeed, it may fairly be believed, without doing violence to the terms of the resolution, that nothing was intended outside of discreditable party schemes and movements to accomplish party ends and advantages. Will the House allow this extraordinary power to be used to oppress the private citizen? Will it countenance and encourage or force upon the government the expenditure of large sums of money for mere partisan political purposes, which must be the *result* if not the *object* of this proceeding?

In conclusion, the undersigned declares that, in his opinion, the positions taken by the President in the message referred to the committee are right, and that the protest made by him against the action of the House has a solid foundation in the provisions of the Constitution of the United States, and in those great principles which underlie every well-ordered system of law hitherto established for the administration of justice.

GEO. S. HOUSTON.

MINORITY REPORT.

Mr. TAYLOR presented the following views of the minority.

The undersigned member of the Committee on the Judiciary, to whom was referred the message of the President, in which he protests against the action of the House in adopting the first two clauses of certain resolutions passed on the fifth day of March last, respectfully submits the following minority report:

The resolutions adopted by the House on the fifth day of March were in the following words:

"*Resolved*, That a committee of five members be appointed by the Speaker, for the purpose of investigating whether the President of the United States, or any other officer of the government, has, by money, patronage, or other improper means, sought to influence the action of Congress, or any committee thereof, for or against the passage of any law appertaining to the rights of any State or Territory; also, to inquire into and investigate whether any officer or officers of the government have, by combination or otherwise, prevented or defeated, or attempted to prevent or defeat, the execution of any law or laws now upon the statute-book, and whether the President has failed or refused to compel the execution of any law thereof; and that said committee shall investigate and inquire into the abuses at the Chicago or other post offices, and at the Philadelphia and other navy yards; and into any abuses in connexion with the public buildings and other public works of the United States.

"*And resolved further*, That as the President, in his letter to the Pittsburg centenary celebration of the 25th of November, 1858, speaks of the employment of money to coerce elections, said committee shall inquire into and ascertain the amount so used in Pennsylvania and any other State or States; in what districts it was expended, and by whom, and by whose authority it was done, and from what source the money was derived, and to report the names of the parties implicated; and that, for the purpose aforesaid, said committee shall have power to send for persons and papers, and to report at any time."

This message relates only to the two first clauses of the first resolution, which are recited in it, and are as follows:

"*Resolved*, That a committee of five members be appointed by the Speaker, for the purpose [first] of investigating whether the President of the United States, or any other officer of the government, has, by money, patronage, or other improper means, sought to influence the action of Congress, or any committee thereof, for or against the passage of any law appertaining to the rights of any State or Territory; [and second,] also to inquire into and investigate whether any officer or officers of the government have, by combination or otherwise, prevented or defeated, or attempted to prevent or defeat, the execution of any law or laws now upon the statute-book, and whether the President has failed or refused to compel the execution of any law thereof."

The President takes no exception to the remaining portions of the first resolution, which relate to alleged abuses in post offices, navy yards, public buildings, and other public works of the United States, because, he says, "in such cases inquiries are highly proper in themselves, and belong equally to the Senate and the House, as incident to their legislative duties," "to enable them to provide the legislative remedies for any abuses which may be" found to exist. Nothing whatever is said by him in this message with respect to the second resolution. His protest is made against the two first clauses of the

first resolution, which are recited in it, and he expressly declares that he confines himself "exclusively to those two branches of the resolution."

These two clauses are accusatory in their nature; and regarding them in that light, the President has seen fit to avail himself of his constitutional power of communicating with the House, to lay before it his objections to the proceedings instituted by the House against him and other officers of the government by their adoption. In doing this, the President says, in substance, that the House of Representatives possess no power under the Constitution over the accusatory portion of the resolution, except as an impeaching body. With that exception, the President asserts "the Constitution has invested the House of Representatives with no power, no jurisdiction, no supremacy whatever over the President." In all other respects, he continues, "he is quite as independent of them as they are of him." The President afterwards proceeds to notice the character of the investigation which the resolution proposes to institute, and having noticed the fact that it is directed to no specific charge or charges, but whether the President has, by "money, patronage, or other improper means, sought to influence," not the action of any individual member or members of Congress, but "the action" of the entire body "of Congress" itself, or "any committee thereof," and that the investigation which the resolution proposes to institute "is as vague and general as the English language affords words in which to make it," so that he can have no "glimmering of the nature of the offence to be investigated" under the accusation, he says, in substance, that the principles recognized in "the Constitution of the United States, and of the several States," which require that, in cases of prosecution for any offence, the person prosecuted "shall be informed, in the very beginning, of the nature and cause of the accusation against him," and "other principles, not less sacred, presenting an impenetrable shield" for the protection of every citizen against false charges, "have been violated in the prosecution instituted by the House of Representatives against the executive branch of the government," and makes his "solemn protest" against their proceedings "in the name of the people of the United States, because they are in violation of the rights of the co-ordinate executive branch of the government, and subversive of its independence;" because they are calculated to foster false accusations "incapable, from their nature, of being disproved;" and because such proceedings, if unresisted, "would establish a precedent dangerous and embarrassing to all" his "successors, to whatever political party they might be attached."

The question thus presented to the House by the protest of the President, though one of the gravest importance, is yet restricted within very narrow limits. There can be no real difference of opinion as to the constitutional position of the two great departments of the government—the legislative and executive—with respect to each other. The power of the House to institute the inquiries necessary to bring abuses in the administration of our public affairs to light, with a view to the punishment of those who have been guilty of them, and to the prevention of similar abuses in the future by remedial legisla-

tion, when that is practicable, is fully conceded by the President. Upon that point there neither is nor can be any dispute. The questions actually presented by the protest the undersigned believes to be these and these alone: 1st. Has the House an unlimited power to institute and carry on investigations of any kind and for any purpose according to its own mere will and pleasure; or is it restrained and controlled in the exercise of the power vested in it by the operation of the great principles of law everywhere recognized throughout our common country, where the rights of individuals are concerned? and 2d, If it is so restrained and controlled, then was the action of the House, in adopting the resolution complained of by the President, in violation of those great principles of law, or in conformity with them?

The undersigned cannot for a moment conceive that there is any room for doubt upon the first question. Our government is a government of law. It was the design of its framers that everything connected with its action should be regulated, as far as practicable, by positive constitutional provision or legislative enactment. There is no such thing in our whole system as a grant of unlimited, arbitrary power. One great object had in view in its construction was to give security to the citizen; and to that end our national and State constitutions, and our statute-books, are filled with provisions to shield and protect him against the approaches of oppression, and to furnish him with remedies against invasions upon his rights. These provisions were intended to operate everywhere within our boundaries for his security and protection, and the barriers which they interpose against injustice should be as effectual for his defence against wrong coming from one quarter as from another. The functions of the House of Representatives with respect to investigations into abuses in the administration of our affairs, and into the misconduct of our public officers, are in their nature judicial, and it is as much the duty of members of the House to be guided by the principles of these legal and constitutional provisions, when they are called on to act on questions which concern the personal rights of men, as if they were formally invested with the judicial ermine. This has been the common judgment of the whole American people from the very foundation of the government, and I cannot for a moment conceive that any one can have a doubt on the subject. Considering this question as settled beyond all controversy, I shall now proceed to an examination of the second one, viz: Was the action of the House, in adopting the resolution complained of by the President, in violation of those great principles, or in conformity with them?

The right of the House to enter upon an inquiry as to whether an offence has not been committed, or if a particular person is not guilty of a crime, is not the mere creature of an arbitrary discretion. The power of the House, like that of a court over such a subject, can only be exerted upon a case made. The power of a court is one thing, the right to exercise that power is another and quite a different thing. And it is the same with the judicial power of the House. Before the right to exercise it in an inquest of a criminal nature can exist, there must be good cause shown for it, by evidence of some kind sufficient to give rise to a reasonable suspicion as to the perpetration of an

offence or the guilt of the individual. In the absence of any such evidence the right does not exist, and the institution of an inquiry would be improper. But what would be merely improper in one case might be highly censurable in another. A roving commission to inquire into possible offences, without any reasonable ground for the belief that offences had been committed, would certainly be improper; but to raise a committee to inquire if a particular person, designated by name, had not been guilty of a certain specified crime, when no evidence of any kind was before the House to give rise to any suspicion against him, would be more than improper: it would be an outrage. An inquiry of that kind, made with respect to any one by the public authority, implies from its very nature that there is reason to believe him guilty.

Our laws are not alone framed to protect the persons and property of our citizens. They are also designed to secure them in the possession of their good names; and it is with that object that when a private person, upon the pretence of a desire to enforce the criminal law, throws upon another an imputation of having committed a crime, without having had any reasonable ground of suspicion, the act is regarded as a wrong, and the law gives redress to the one falsely charged by punishing the wrong-doer, or mulcting him in damages. But no such protection is given to the citizen against similar action on the part of the House. His only safeguard against an unjust or oppressive exercise of its power grows out of the obligation imposed on its members, in the forum of conscience, to make their action, in cases affecting his reputation or his personal rights, conform to those great principles of law which are everywhere recognized in the administration of justice between man and man. Owing to the peculiar character of the House as a political body, intrusted with a certain portion of the functions of government, these principles can be enforced neither against the House in its collective capacity, nor through the persons of its members by penal sanctions. Their operation for his protection can only be made effective through the voice of reason; and it, therefore, becomes of vital importance to the House itself, and to the people of the whole United States, that individual members should not hesitate to expose such action by the expression of their individual opinion against it when such cases arise.

Such a case, in my opinion, has now arisen; and it is an extraordinary one. It is not a case of wrong done to a private person; it is not even a case of wrong done to a high public officer. The wrong is done to the Chief Magistrate of the nation; to one who constitutes an entire department of the government, which is made co-ordinate with the Congress itself by the Constitution. It is disagreeable and unpleasant for a representative of a portion of the American people to differ in opinion from a majority of his brethren, when the expression of that difference of opinion necessarily involves a censure upon the action of that majority. But it is a duty we owe to our own constituents, to the people of the United States, to the representatives who may come after us, to the President in his own person, to the executive department of the government, and to the Constitution, to give a full and free expression to that opinion, and I shall, therefore, proceed to do it with the most perfect freedom, but without intending

any disrespect to the majority, or to any individual member of that majority.

The clauses of the resolution against the adoption of which the President protests in the message before us, it will be remembered, are in the following words:

"*Resolved*, That a committee of five members be appointed by the Speaker, for the purpose of investigating whether the President of the United States, or any other officer of the government, has, by money, patronage, or other improper means, sought to influence the action of Congress, or any committee thereof, for or against the passage of any law appertaining to the rights of any State or Territory; also to inquire into and investigate whether any officer or officers of the government have, by combination or otherwise, prevented or defeated, or attempted to prevent or defeat, the execution of any law or laws now upon the statute-book, and whether the President has failed or refused to compel the execution of any law thereof."

It has been said, in justification of the course of the majority of the House in adopting these clauses of the resolutions of the 5th of March, that two members of the House were expelled during the 34th Congress upon charges more vague and indefinite than those implied in these clauses; and upon this ground, those saying so, would have it inferred that the action of the House in the case referred to was of the same character with that had when the resolutions of the 5th of March were adopted. But this is not so. In that case, no person was named in the resolution; and a specific charge was made against the unknown persons inculpated. That charge was contained in a preamble and resolution in the following words:

"Whereas certain statements have been published charging that members of this House have entered into corrupt combinations for the purpose of passing and of preventing the passage of certain measures now pending before Congress: Therefore—

"*Resolved*, That a committee, consisting of five members, be appointed by the Speaker, with power to send for persons and papers, to investigate said charges; and that said committee report the evidence taken, and what action, in their judgment, is necessary on the part of the House, without any unnecessary delay."

The charge thus made was a specific charge, for it stated a distinct fact constituting the alleged offence—that is, first, a corrupt combination of members; and second, the time when and place where the fact transpired, viz: during the then session of Congress, and in the House itself. But though this was so, and the papers of the day teemed with such charges, still the House refused to proceed upon them and raise a committee to inquire into their truth until probable cause was shown by a credible witness. The House did not adopt the resolution and enter upon the inquiry until a member rose in his place and stated, under all the responsibilities of a representative, that a member had made a corrupt proposal to him of the character charged, and that he had good cause to believe, and did believe, that there was such a combination of members.

And how is it in the proceedings recently adopted by the House against which the President has made his solemn protest? No distinct fact constituting an offence is set forth. The inquiry instituted is limited to no period of time—to no class of persons—to circumstances transpiring at no particular place; but his whole official life

is made the subject of investigation by the House, through a committee clothed by it with extraordinary and inquisitorial powers, when not one particle of evidence, not one syllable of testimony inculpating him in any degree whatever had been placed before it.

But the proceedings of the House in the case of the expulsion of members during the thirty-fourth Congress has no analogy whatever with those now instituted by it against the President. The House, by the Constitution, is permitted to determine for itself the rules of its proceedings, and has the sole power of punishing its members for misconduct in their representative capacity. It is not so, however, with respect to the incumbent of the presidential office. The House has no peculiar authority over him. He is selected for the exercise of that great trust by the direct votes of the whole American people. He is the representative of the sovereignty of the United States in their intercourse with foreign nations. His duties are prescribed with exactness in the Constitution; and, by the provisions of that instrument, the executive power, to be exercised by him under its authority, is co-ordinate with that of the legislative department vested jointly in the two houses of Congress.

Under such circumstances, it is obvious to all that the public interest, and, indeed, the very success of our scheme of government, requires that the magistrate, to whom is intrusted the discharge of the many important and delicate duties devolved on the presidential office, should be protected from all interference in such a manner that he may at all times be perfectly free to exercise the discretion vested in him by the Constitution and laws whilst acting within the scope of the powers delegated to him under their authority. And this is what the Constitution has done. It makes the President completely independent of the other departments of the government whilst he acts within the line of his duty; and its gives no right to any other department of the government, or to any man or any body of men, to institute an investigation into his official conduct, unless it be with a view to his removal "from office on impeachment for" "treason, bribery, or other high crimes and misdemeanors." When there is any reason to believe that the President of the United States has corruptly administered the duties of his great place in violation of his oath of office, it is the duty of every man, whether in a private or a public station, to make known the facts, justifying such a belief, which have come to his knowledge, with a view to his trial and conviction under the authority of the Constitution. But it is equally true that no one, without incurring just censure, can question or reflect upon the official conduct of the President by imputing to him the commission of a crime, when he has no personal knowledge of any fact authorizing such an imputation, and no evidence of the kind has been given by any other person. And if this be true with respect to ordinary individuals, how much more true is it that such conduct is unbecoming a representative of the American people, or in a House of Representatives acting in its collective capacity through the votes of a majority of its members? Public bodies, like individuals, in their intercourse with each other, are bound to the observance of all the proprieties of life. This obligation, which is imposed on them in the public interest, was lost sight of by the House when it threw an imputation upon the official

integrity of the President without having any evidence on the subject before it; and the undersigned is constrained to say that, in his opinion, that action of the House was a breach of all those rules of decency and decorum, which should obtain between different departments of the same government, for the preservation of that harmony and kind feeling between them which are essential to the easy and proper transaction of the public business.

It is the imperative duty of the House to institute proceedings against the President, if there is any reasonable ground for the belief that he has been guilty of the violation of his official duty under the Constitution. When any fact is made known by any competent evidence which is calculated to raise against him a presumption of that kind, no matter how slight that presumption may be, I shall be among the first to demand action against him. But is there any proper foundation for the inquiry into the conduct of the President, which has been authorized by the House? The undersigned is compelled to say that there is not. Nay, more, I am constrained to declare, and I do it with pain, that an examination of the resolutions adopted by the House, coupled with the circumstances accompanying their presentation and passage, afford just grounds, in my opinion, for the belief that the proceeding against the President, which is the subject of his protest, was not instituted in good faith, and that it is not based on any ground, real or pretended, brought to the notice of members, which would afford even a color of excuse for engaging in the inquiry contemplated. And this I will now proceed to show.

The House, in its action on the 5th of March, adopted, under the pressure of the previous question, two resolutions—one containing the clauses which are the subject of the President's protest, and another (the second resolution) in the following words:

"*And resolved further*, That as the President, in his letter to the Pittsburg centenary celebration of the 25th of November, 1858, spoke of the employment of money to coerce elections, said committee shall inquire into and ascertain the amount so used in Pennsylvania and any other State or States; in what districts it was expended, and by whom, and by whose authority it was done, and from what source the money was derived, and to report the names of the parties implicated; and that, for the purpose aforesaid, said committee shall have power to send for persons and papers, and to report at any time."

The statement contained in the letter of the President, as set forth in this resolution, is the only ground on which the whole inquiry contemplated in the two resolutions is predicated. No other ground for the action of the House was alleged at the time by the mover of the resolutions. No evidence of any kind beyond the alleged statement contained in this letter was before the House. Nor was it pretended by the mover of the resolutions that there was any other. Well, what does this amount to? The statement of the President, if any such was made, was contained in a letter written in his private capacity, in which he condemned the use of money for carrying elections, which, he intimated, was now a frequent practice, and was fast becoming a great public evil. This statement, if it could have been properly made the basis of action on the part of the House, would

have placed the President in the attitude of one making a charge to the effect that money had been improperly employed as a means for controlling our popular elections. If Congress has the authority to enter into the State of Pennsylvania and the other States of the Union, as the resolution contemplates, for the purpose of inquiring into violations of their election laws, and exerting a general supervision and control over their citizens with respect to their own elections, such a charge, if credited by the House, would not only justify but require the adoption, on the part of the House, of proper measures to secure a thorough and searching investigation into its truth.

And how would such an investigation have been gone into on this charge if it had been the intention of a majority of the House to enter upon it in good faith? The first step taken would necessarily have been to call upon the President for information as to the facts on which the charge made by him was founded, and for the names of the witnesses by whose testimony these facts could have been substantiated. This would have necessarily been the first step taken by the House if it really designed basing any serious proceedings on this alleged charge with a view to the exposure of the corrupt influences heretofore brought to bear upon our elections, and applying a remedy to them for the future. But it was not taken. On the contrary, whilst this charge, said to have been made by the President, is the only avowed ground for any action on the subject on the part of the House, the first step taken by the House is to adopt a resolution, to do what? Why, to raise a select committee of five, with authority to send for persons and papers, "for the purpose of investigating whether the President of the United States" "has, by money, patronage, or other improper means, sought to influence the action of Congress, or any committee thereof, for or against the passage of any law," &c.

The only reason assigned for raising the committee was, that the President had made a charge that money had been improperly used in elections; and the first instruction given to the committee is to "investigate" the conduct of the President throughout his whole official life. That is, the first step taken by the judge, on the pretence of acting upon an accusation, is to accuse the accuser, and make extraordinary provision for raking up every species of testimony against him! I will here venture to assert that a parallel to this proceeding of the House cannot be found in the whole range of history. And why was this done? Who has charged the President with the corrupt use of money, or of the patronage of his office, to influence the action of Congress? What are the facts which justify the imputation, implied in the adoption of the first resolution, upon a man whose character, during a long life spent in the service of his country, has been unsullied by a single stain? No such facts have been communicated to the House. The mover of the resolution did not even pretend at the time of moving it that any such facts existed. Why, then, we would ask, has an inquisition into the whole official life of the President been authorized without any foundation for it on legal or constitutional grounds, and in palpable violation of the principles of common justice? It certainly cannot be for any constitutional object. And then may it not with propriety be said that it is to

throw obloquy on the Chief Magistrate of the nation, with a view to secure some advantage to a political party in the great contest which is now approaching?

If the authority given in the first clause of the first resolution, "for the purpose of investigating whether the President of the United States" "has, by money, patronage, or other improper means, sought to influence the action of Congress," &c., was given by the House on the ground that there was good reason to believe that he had employed money, or the patronage of his office, to influence the action of Congress, then the House has failed to discharge its duty to the people under the Constitution. If the House acted on that opinion, in place of the action taken, it was its imperative duty to have instituted proceedings with a view to the removal of the President; for the employment of money and of official patronage, to influence the action of Congress, is bribery, and that is one of the very offences enumerated in the Constitution, for the commission of which it is declared the President shall be removed from office. And how is this to be done? In the manner provided for in the resolution against which the President has made his protest? Not at all. To find any precedent for that we must go back to the arbitrary proceedings of an English Star Chamber, or to the secret inquisition of a Venetian Council of Ten. No. It is to be by proceedings worthy of the age in which we live—in conformity with the settled practice of the country in which it is to be carried on, and in accordance with the immutable principles of justice.

The President of the United States, as well as all other civil officers, can be removed from office only on conviction of treason, bribery, or other high crimes and misdemeanors, upon a trial before the Senate on an impeachment preferred by the House of Representatives. And what ought to be the basis of proceedings by the House of Representatives when it is called on to act as the grand inquest of the nation? We have had such a number of instances in our history, in which public officers have been impeached by the House of Representatives, that this can no longer be regarded as an open question. In no one instance, since the foundation of the government, has the House of Representatives instituted any preliminary proceeding with a view to the impeachment of a public officer, unless it was based upon a memorial or petition presented by some credible person, or by a resolution presented by a member, who set forth the specific facts charged on which the impeachment was demanded, with reasonable minuteness and precision, and vouched for their truth; and this is a rule which is just both to the public and to the accused. It is just to the public, because it enables the representatives of the people to decide whether the charges set forth are of such a nature as to justify an investigation; and it is just to the accused, because it gives him an opportunity to meet the charges against him and prove them false.

But the course adopted in the proceeding against the President violates this rule in both particulars. By dispensing with a statement of the particular facts charged against the President, no representative is in a position to decide whether there are or are not any charges actually made against him which require looking into: whilst, on the

other hand, this very circumstance, that there is no particular fact alleged against him, renders it absolutely impossible for the President to meet the charge of bribery, which the adoption of the resolution necessarily implies is now made against him, or to provoke the judgment of the constitutional tribunal upon it so as to obtain an acquittal from the charge. Can another case like this be found in the whole history of the United States? Is there any court, State or federal, presided over by any fair-minded man, that would tolerate for a single instant the application of such a measure of justice to the humblest person under its jurisdiction as that already measured out by the House of Representatives to the Chief Magistrate of the nation? And what, I now ask, will be the judgment of the world upon this whole proceeding, when the animosities and bitterness of contending parties shall have passed away? Can any one doubt that judgment? Will it not be believed that the desire to do something—anything—which would be likely to advance party interests, had made a majority of the representatives of the American people so far forgetful of the right that they were made willing instruments to throw discredit on a distinguished opponent by casting on him an unjust imputation, and that, too, by the adoption of a course unknown to the Constitution and to the principles of law, and which was of such a character as enabled the real authors of the calumny to escape all the consequences which usually attach to those making a groundless accusation?

Will it be possible for any unbiased mind to arrive at a different conclusion? Was the allegation with respect to the statement, said in the resolution to have been contained in the President's "centenary celebration" letter, anything but a pretext for raising a committee to assail the President? Was the second resolution, which purports to be based on it, anything but a pretext to get the power necessary to carry on the assault provided for in the first resolution? There is no law of the United States regulating elections in the different States. There are no laws of the United States punishing the improper use of money in elections in the different States. The whole jurisdiction and control over the subject of elections is in the several States. It is true, that by the laws of the several States the improper use of money in elections is prohibited, and that offences against their prohibitions are punished by them with severe penalties. But such offences are offences against the State laws; they are subject to prosecution by the State authorities; they are to be punished by the action of the State courts; and if new remedies are required for the prevention of abuses at these elections, it is clear that they are to be provided for and applied through the action of State legislatures.

It is the theory of our government that the people of the different States are competent to manage their own local affairs. If this be true in fact, it is difficult to understand on what principle the investigation provided for in the second resolution adopted on the 5th of March is based. The House has no authority to inquire into elections holden in the States except in so far as it is necessary to enable it to "judge of the elections, returns, and qualifications of its own members." The election of presidential electors is, by an express provision of the Constitution of the United States, placed under the sole and exclusive

control of the several States. It can hardly be presumed, in the face of all these facts, that it was really the intention of the House to enter into the State of Pennsylvania, and other States, with a view to the prosecution of the inquiries provided for by the terms of the second resolution. Such a proceeding would be an invasion of the rights of the States and a usurpation of power on the part of the House. No one can for a moment suppose that this was the object of the majority of the House. What, then, was it? It is hardly possible to avoid the conclusion that the real object was to obtain the power to institute the extraordinary inquisition into the whole official life of the President, which is provided for in the first resolution.

Before a majority of the House deliberately decides to persevere in the course entered on by the adoption of these resolutions, it will be well for them to examine the resolutions and consider well where this course is to lead. The resolutions not only authorize an inquisition, in the nature of a criminal prosecution, into the whole official life of the President, and of every officer under the government, without any specific charge made or distinct fact stated on which a charge could be made, but it also arms those employed in making this inquisition with "power to send for persons and papers;" or, in other words, to compel, at their discretion, every person within the limits of the United States to submit all the papers in his possession to their inspection and perusal at their mere will and pleasure. If the institution of criminal proceedings against individuals, without any reasonable grounds of suspicion having been shown, displays a sufficient disregard of the rights of the citizen under the law, what must be thought of a proceeding which invests a majority of the committee of the House, employed in the prosecution of such an inquisition, with a power, to be exercised at their discretion, to call for and compel the production of the private papers of every citizen, and that, too, in the face of the provision of the 4th article of the amendments of the Constitution of the United States, which declares that "the rights of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and" that "no warrants shall be issued but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

The first approaches of arbitrary power are always insidious, and are carefully veiled under specious pretences. If proceedings of the character of this just instituted by the House are to be tolerated by the American people, and pass into precedent, what becomes of the boasted immunities of the citizen? They disappear at once and forever under the arbitrary power which may at any time be exerted for his oppression, whether he be in a private or a public station, at the will of a mere majority of the House of Representatives. It has been truly said that the teaching of all history shows that "eternal vigilance is the price of liberty;" and it will be well for the American people and their posterity, if they are not forgetful of the lesson in this crisis of our affairs.

In conclusion, the undersigned declares that, in his opinion, the positions taken by the President in the message referred to the com-

mittee, and which were stated in substance at the opening of this report, are right; and that the protest made by him against the action of the House has a solid foundation in the provisions of the Constitution of the United States, and in those great principles which underlie every well-ordered system of law hitherto established for the administration of justice.

MILES TAYLOR.

NOTE.—There was so little time allowed us to prepare a minority report that, owing to the distance between our residences, it was impossible for us to get together and prepare a joint one; and in consequence of this, though agreeing entirely in our views on the subject of the protest made by the President in his message of the 29th March, 1860, we were compelled to prepare separate reports, in order to be able to report in time to have our views presented at the same time with those embodied in the report of the majority.

GEO. S. HOUSTON.
MILES TAYLOR.

THIRTY-SIXTH CONGRESS—FIRST SESSION.

CONGRESS OF THE UNITED STATES.

IN THE HOUSE OF REPRESENTATIVES,

March 5, 1860.

On motion of Mr. COVODE,

Resolved, That a committee of five members be appointed by the Speaker, for the purpose of investigating whether the President of the United States, or any other officer of the government, has, by money, patronage, or other improper means, sought to influence the action of Congress, or any committees thereof, for or against the passage of any law appertaining to the rights of any State or Territory; and also to inquire into and investigate whether any officer or officers of the government have, by combination or otherwise, prevented and defeated, or attempted to prevent or defeat, the execution of any law or laws now on the statute-books, and whether the President has failed or refused to compel the execution of any law thereof; that said committee shall investigate and inquire into the abuse at the Chicago or other post offices, and at the Philadelphia and other navy yards, and into any abuses in connexion with the public buildings and other public works of the United States.

Resolved further, That as the President, in his letter to the Pittsburg centenary celebration of the 25th November, 1858, speaks of "the employment of money to carry elections," said committee shall inquire into and ascertain the amount so used in Pennsylvania and any other State or States, in what districts it was expended, and by whom, and by whose authority it was done, and from what sources the money was derived, and report the names of the parties implicated; and, for the purpose aforesaid, said committee shall have power to send for persons and papers, and to report at any time.

Ordered, That Mr. Covode, Mr. Olin, Mr. Train, and Mr. James C. Robinson be appointed said committee.

Attest: J. W. FORNEY, *Clerk*.

MESSAGE OF THE PRESIDENT OF THE UNITED STATES, PROTESTING AGAINST CERTAIN PROCEEDINGS OF THE HOUSE OF REPRESENTATIVES.

To the House of Representatives:

After a delay which has afforded me ample time for reflection, and after much and careful deliberation, I find myself constrained by an imperious sense of duty, as a coördinate branch of the federal government, to protest against the first two clauses of the first resolution adopted by the House of Representatives on the 5th instant, and published in the *Congressional Globe* on the succeeding day. These clauses are in the following words: "*Resolved*, That a committee of

five members be appointed by the Speaker, for the purpose, 1st, of investigating whether the President of the United States, or any other officer of the government, has, by money, patronage, or other improper means, sought to influence the action of Congress, or any committee thereof, for or against the passage of any law appertaining to the rights of any State or Territory; and 2d, 'also to inquire into and investigate whether any officer or officers of the government have, by combination or otherwise, prevented or defeated, or attempted to prevent or defeat, the execution of any law or laws now upon the statute-book; and whether the President has failed or refused to compel the execution of any law thereof.' "

I confine myself exclusively to these two branches of the resolution, because the portions of it which follow relate to alleged abuses in post offices, navy yards, public buildings, and other public works of the United States. In such cases inquiries are highly proper in themselves, and belong equally to the Senate and the House as incident to their legislative duties, and being necessary to enable them to discover and to provide the appropriate legislative remedies for any abuses which may be ascertained. Although the terms of the latter portion of the resolution are extremely vague and general, yet my sole purpose in adverting to them at present is to mark the broad line of distinction between the accusatory and the remedial clauses of this resolution. The House of Representatives possess no power under the Constitution over the first or accusatory portion of the resolution, except as an impeaching body; whilst over the last, in common with the Senate, their authority as a legislative body is fully and cheerfully admitted.

It is solely in reference to the first or impeaching power that I propose to make a few observations. Except in this single case, the Constitution has invested the House of Representatives with no power, no jurisdiction, no supremacy whatever over the President. In all other respects he is quite as independent of them as they are of him. As a coördinate branch of the government, he is their equal. Indeed, he is the only direct representative on earth of the people of all and each of the sovereign States. To them, and to them alone, is he responsible whilst acting within the sphere of his constitutional duty, and not in any manner to the House of Representatives. The people have thought proper to invest him with the most honorable, responsible, and dignified office in the world; and the individual, however unworthy, now holding this exalted position, will take care, so far as in him lies, that their rights and prerogatives shall never be violated in his person, but shall pass to his successors unimpaired by the adoption of a dangerous precedent. He will defend them to the last extremity against any unconstitutional attempt, come from what quarter it may, to abridge the constitutional rights of the Executive, and render him subservient to any human power except themselves.

The people have not confined the President to the exercise of executive duties. They have also conferred upon him a large measure of legislative discretion. No bill can become a law without his approval, as representing the people of the United States, unless it shall pass after his veto by a majority of two-thirds of both houses. In his legis-

lative capacity, he might, in common with the Senate and the House, institute an inquiry to ascertain any facts which ought to influence his judgment in approving or vetoing any bill.

This participation in the performance of legislative duties between the coördinate branches of the government ought to inspire the conduct of all of them, in their relations towards each other, with mutual forbearance and respect. At least each has a right to demand justice from the other. The cause of complaint is, that the constitutional rights and immunities of the Executive have been violated in the person of the President.

The trial of an impeachment of the President before the Senate on charges preferred and prosecuted against him by the House of Representatives would be an imposing spectacle for the world. In the result, not only his removal from the presidential office would be involved, but, what is of infinitely greater importance to himself, his character, both in the eyes of the present and of future generations, might possibly be tarnished. The disgrace cast upon him would in some degree be reflected upon the character of the American people who elected him. Hence the precautions adopted by the Constitution to secure a fair trial. On such a trial it declares that "the chief justice shall preside." This was doubtless because the framers of the Constitution believed it to be possible that the Vice-President might be biased by the fact that, "in case of the removal of the President from office," "the same shall devolve on the Vice-President."

The preliminary proceedings in the House in the case of charges which may involve impeachment have been well and wisely settled by long practice upon principles of equal justice both to the accused and to the people. The precedent established in the case of Judge Peck, of Missouri, in 1831, after a careful review of all former precedents, will, I venture to predict, stand the test of time.

In that case, Luke Edward Lawless, the accuser, presented a petition to the House, in which he set forth minutely and specifically his causes of complaint. He prayed "that the conduct and proceedings in this behalf of said Judge Peck may be inquired into by your honorable body, and such decision made thereon as to your wisdom and justice shall seem proper." This petition was referred to the Judiciary Committee; such has ever been deemed the appropriate committee to make similar investigations. It is a standing committee supposed to be appointed without reference to any special case, and at all times is presumed to be composed of the most eminent lawyers in the House from different portions of the Union, whose acquaintance with judicial proceedings and whose habits of investigation qualify them peculiarly for the task. No tribunal, from their position and character, could in the nature of things be more impartial. In the case of Judge Peck the witnesses were selected by the committee itself, with a view to ascertain the truth of the charge. They were cross-examined by him, and everything was conducted in such a manner as to afford him no reasonable cause of complaint. In view of this precedent, and, what is of far greater importance, in view of the Constitution and the principles of eternal justice, in what manner has the President of the United States been treated by the House of Representatives? Mr.

John Covode, a representative from Pennsylvania, is the accuser of the President. Instead of following the wise precedents of former times, and especially that in the case of Judge Peck, and referring the accusation to the Committee on the Judiciary, the House have made my accuser one of my judges.

To make the accuser the judge, is a violation of the principles of universal justice, and is condemned by the practice of all civilized nations. Every freeman must revolt at such a spectacle. I am to appear before Mr. Covode, either personally or by a substitute, to cross-examine the witnesses which he may produce before himself to sustain his own accusations against me; and perhaps even this poor boon may be denied to the President.

And what is the nature of the investigation which his resolution proposes to institute? It is as vague and general as the English language affords words in which to make it. The committee is to inquire, not into any specific charge or charges, but whether the President has, by "money, patronage, or other improper means, sought to influence," not the action of any individual member or members of Congress, but "the action" of the entire body "of Congress" itself, "or any committee thereof." The President might have had some glimmering of the nature of the offence to be investigated, had his accuser pointed to the act or acts of Congress which he sought to pass or to defeat by the employment of "money, patronage, or other improper means." But the accusation is bounded by no such limits. It extends to the whole circle of legislation; to interference "for or against the passage of any law appertaining to the rights of any State or Territory." And what law does not appertain to the rights of some State or Territory? And what law or laws has the President failed to execute? These might easily have been pointed out, had any such existed.

Had Mr. Lawless asked an inquiry to be made by the House, whether Judge Peck, in general terms, had not violated his judicial duties, without the specification of any particular act, I do not believe there would have been a single vote in that body in favor of the inquiry.

Since the time of the Star Chamber and of general warrants there has been no such proceeding in England.

The House of Representatives, the high impeaching power of the country, without consenting to hear a word of explanation, have endorsed this accusation against the President, and made it their own act. They even refused to permit a member to inquire of the President's accuser what were the specific charges against him. Thus, in this preliminary accusation of "high crimes and misdemeanors" against a coördinate branch of the government, under the impeaching power, the House refused to hear a single suggestion even in regard to the correct mode of proceeding, but, without a moment's delay, passed the accusatory resolutions under the pressure of the previous question.

In the institution of a prosecution for any offence against the most humble citizen—and I claim for myself no greater rights than he enjoys—the Constitution of the United States, and of the several States, require that he shall be informed, in the very beginning, of the nature and cause of the accusation against him, in order to enable him to

prepare for his defence. There are other principles which I might enumerate, not less sacred, presenting an impenetrable shield to protect every citizen falsely charged with a criminal offence. These have been violated in the prosecution instituted by the House of Representatives against the executive branch of the government. Shall the President alone be deprived of the protection of these great principles which prevail in every land where a ray of liberty penetrates the gloom of despotism? Shall the Executive alone be deprived of rights which all his fellow-citizens enjoy? The whole proceeding against him justifies the fears of those wise and great men who, before the Constitution was adopted by the States, apprehended that the tendency of the government was to the aggrandizement of the legislative at the expense of the executive and judicial departments.

I again declare, emphatically, that I make this protest for no reason personal to myself; and I do it with perfect respect for the House of Representatives, in which I had the honor of serving as a member for five successive terms. I have lived long in this goodly land, and have enjoyed all the offices and honors which my country could bestow. Amid all the political storms through which I have passed, the present is the first attempt which has ever been made, to my knowledge, to assail my personal or official integrity; and this as the time is approaching when I shall voluntarily retire from the service of my country. I feel proudly conscious that there is no public act of my life which will not bear the strictest scrutiny. I defy all investigation. Nothing but the basest perjury can sully my good name. I do not fear even this, because I cherish an humble confidence that the Gracious Being who has hitherto defended and protected me against the shafts of falsehood and malice will not desert me now, when I have become "old and gray-headed." I can declare, before God and my country, that no human being (with an exception scarcely worthy of notice) has, at any period of my life, dared to approach me with a corrupt or dishonorable proposition; and, until recent developments, it had never entered into my imagination that any person, even in the storm of exasperated political excitement, would charge me, in the most remote degree, with having made such a proposition to any human being. I may now, however, exclaim, in the language of complaint employed by my first and greatest predecessor, that I have been abused "in such exaggerated and indecent terms as could scarcely be applied to a Nero, to a notorious defaulter, or even to a common pickpocket."

I do, therefore, for the reasons stated, and in the name of the people of the several States, solemnly protest against these proceedings of the House of Representatives, because they are in violation of the rights of the coördinate executive branch of the government, and subversive of its constitutional independence; because they are calculated to foster a band of interested parasites and informers, ever ready, for their own advantage, to swear before *ex parte* committees to pretended private conversations between the President and themselves, incapable, from their nature, of being disproved, thus furnishing material for harassing him, degrading him in the eyes of the country, and eventually, should he be a weak or a timid man, rendering him

subservient to improper influences, in order to avoid such persecutions and annoyances; because they tend to destroy that harmonious action for the common good which ought to be maintained, and which I sincerely desire to cherish between coördinate branches of the government; and, finally, because, if unresisted, they would establish a precedent dangerous and embarrassing to all my successors, to whatever political party they might be attached.

JAMES BUCHANAN.

WASHINGTON, *March* 28, 1860.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 395.

SAMUEL J. HENSLEY.

[To accompany Senate Bill No. 249.]

APRIL 10, 1860.

Mr. SCOTT, from the Committee on Indian Affairs, made the following

REPORT.

The Committee on Indian Affairs, to whom the report and Senate bill No. 249, for the relief of Samual J. Hensley was referred, report:

That this claim is for compensation for twelve hundred and eighty-five head of cattle furnished the agents of the United States, at fifteen cents per pound, and by them fed to the Indians in the reserves in California in 1852 and 1853.

The claim was presented to the Court of Claims as a *legal* demand against the government, and the fact established to the satisfaction of the court that six hundred and forty-two thousand five hundred pounds of beef, worth fifteen cents per pound, were furnished by the claimant to the agent of the United States, and fed to the Indians on said reserves.—(See opinions of the court, page 51.)

The court decided that the claim was not a *legal* demand against the United States, because the officer with whom the claimant contracted was not authorized by law to make the contract. The perfect good faith of the claimant throughout the whole transaction is conceded. He believed that the agent had the necessary authority, and sold and delivered his property to a public officer, and it was used for public purposes, at a fair price, in the full expectation that he would be paid the stipulated price without delay.

The counsel for the claimant before the Court of Claims contended that, although the agent was not empowered by law to make the contract, his proceedings were subsequently ratified by a series of acts of Congress, which adopted the policy and measures which the claimant's property was used by the government agents to carry into effect.

The opinion of the court sets forth from authentic sources the history of the strife between the whites and Indians in California, and shows that, under the circumstances of the case, the Indians being driven from their homes, and their food taken from them, that the war which was going on, becoming general, could have no end but by exterminating the Indians, unless they were collected in reserves and fed temporarily till they could have an opportunity to provide for

themselves. It was under such circumstances that treaties were made with them by the agents stipulating for reserves of land and provisions for a year or two.

The provisions stipulated for had to be furnished at once, as the Indians were starving, and must rob if not fed. The wisdom and necessity of this course was never questioned by any one, and it was approved at the time by the President. Peace was the immediate result of it. The Senate rejected the treaties, but the appropriation contained in the act of August 30, 1852, (10 Stat., page 156,) for the preservation of peace with the Indians who had been dispossessed of their lands in California until permanent arrangement for their settlement could be made, originated in the Senate; and afterwards, by the act of 1853, (*ib.*, p. 238,) Congress adopted in substance the policy of the rejected treaties, of collecting the Indians in reserves and feeding them there temporarily.

The court held that, in rejecting the treaties, Congress repudiated the contract with Hensley, and that although Congress afterwards adopted by law the policy of the treaties, and Hensley's property was applied to carry it into effect, yet, holding the law to be *prospective* in its operation, the court decided that Hensley was properly excluded from the benefits of the appropriations by the department.

It is not necessary for the committee to express any opinion on the legal question upon which the decision of the Court of Claims turned, there being no question that the beef for which compensation is claimed was furnished to officers of the government in good faith, and applied successfully to put an end to a war of extermination between the whites and Indians in furtherance of the policy adopted by Congress; there can be no question that the government ought to pay for property so applied to public uses, and the committee accordingly recommend the passage of the bill as passed by the Senate for the relief of said Hensley.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 396.

HENRY WOODS.

[To accompany Joint Resolution No. 32.]

APRIL 12, 1860.

Mr. MOREHEAD, from the Committee on Commerce, made the following

REPORT.

The Committee on Commerce, to whom was referred the memorial of Henry Woods, for compensation as commissioner for the erection of a custom-house and post office at Pittsburg, Pennsylvania, make the following report:

Henry Woods was appointed joint commissioner, with Samuel Roseburg, to superintend the erection of new custom-house, post office, and court-house at Pittsburg, on the 15th March, 1852, and continued to act in that capacity until the 13th day of July, 1854, when the building was completed and the contract finally closed. He was also surveyor of customs and disbursing agent of the Treasury department until he retired from office, which was on the 14th day of May, 1853, during which time his commissions as disbursing agent amounted to $621 25.

The appointment of those commissioners was under an act authorizing the construction of the building, and the civil and diplomatic appropriation bill of August 4, 1854, directs the Secretary of the Treasury to apply, out of any money in the treasury not otherwise appropriated, such sums as may in his opinion be necessary to complete the building for the custom-house, &c., and also to pay to the commissioner who superintended the construction of said buildings, such compensation as the Secretary should deem just, not to exceed three dollars per day each.

This act making appropriation for the civil expenses of the government, passed August 18, 1856, contains the following provision:

"The Secretary of the Treasury is hereby directed to pay to Henry Woods, and to the legal representatives of Samuel Roseburg, deceased, the sum of three dollars per day each, for the service of said Woods and Roseburg in superintending the construction of the building for a custom-house, post office, and court-house, at Pittsburg, Pennsylvania."

After the passage of this act, which is amendatory, Mr. Woods presented his account for services, 851 days at $3, $2,553; and in the settlement then made an error was committed by supposing that when

he was superseded as surveyor of customs, which was on the 14th day May, 1853, his duties as commissioner for the erection of the building ceased also, when the fact is shown by the files of the department, that he continued to act in that capacity until the building was completed. Owing to this error and the fact of Mr. Guthrie, the then Secretary of the Treasury, having deducted the $621 25 received as commissions on disbursements, Mr. Wood refused to receive the amount found due him by the department. The heirs of Samuel Roseburg, his joint commissioner, presented their account to the present Secretary of the Treasury, and received payment as provided for in the act of 1856.

Upon Mr. Woods' application to the present Secretary, he declined to reopen the case, it having been decided by his predecessor. In reply to a letter addressed to him by your committee, he states as follows, viz:

TREASURY DEPARTMENT, *March* 14, 1860.

SIR: As requested in your letter of the 3d instant, I have the honor to transmit herewith copies of papers containing all the information to be had in this department, in relation to the claim of Mr. Woods for compensation as commissioner in building the custom-house at Pittsburg, Pennsylvania.

In reply to that portion of your letter asking my opinion of the case, I have to say that Mr. Woods' claim having been decided by my predecessor, I declined to disturb the decision which had been made, no new facts as required by the regulations being presented, which would justify the reopening of the case by the department.

When Mr. Roseburg's claim, not having been decided by my predecessor, was presented, I decided that it should be paid, and I am free to say that had Mr. Woods' claim been presented to me under similar circumstances, I should have directed its payment without deducting any sum or sums which were paid him in the disbursement of the fund.

I am, very repectfully,

HOWELL COBB,
Secretary of the Treasury.

Hon. J. K. MOREHEAD,
Of the Committee on Commerce, House of Representatives.

The papers referred to in this letter, marked A, B, C, and D, accompany this report, and will be printed with it.

Your committee are of opinion that the claim of the memorialist should be paid in full, and report a joint resolution for that purpose.

A.

TREASURY DEPARTMENT,
Office of Commissioner of Customs, September 30, 1856.

SIR: The enclosed certificate of the First Auditor, No. 124374, in favor of Henry Woods, late surveyor of the customs, &c., at Pittsburg, Pennsylvania, for the sum of $2,553 alleged to be due to him for services rendered as *commissioner* for the erection of a custom-house at that port from March 15, 1852, to July 18, 1854, at three dollars per day, under the act approved August 18, 1856, is respectfully submitted, with the following statement of facts in connexion therewith, for your decision thereon:

Mr. Woods was superseded in the office of surveyor of the customs by Mr. Hastings, the present incumbent, *on the* 14*th of May*, 1854. On the termination of his services as surveyor he claimed to be allowed, and was allowed, in the settlement of his custom accounts, for compensation as superintendent in purchasing a site and making disbursements for custom-house, &c., from July 1, 1853, to May 31, 1854, $621 25, being, with commissions allowed to him as agent of marine hospital, at the rate of $400 per year, the maximum compensation for other services authorized by the eighteenth section of the act of May 7, 1822, which was regarded as a final settlement of his accounts.

The above sum of $621 25 was allowed on the 23d of February, 1855, as will be seen by the Auditor's certificate enclosed, No. 116959, upwards of six months after the passage of the civil and diplomatic act of August 4, 1854, the first section of which, (Statutes at Large, vol. 10, page 361, paragraph 21,) directs the Secretary of the Treasury to apply out of any money in the treasury not otherwise apropriated such sums as may, in his opinion, be necessary to complete the building for the custom-house, &c.; and also to pay to the commissioner who superintended the construction of such building such compensations as the Secretary should deem just, not to exceed three dollars a day each. Mr. Hastings, his successor, has also been allowed for commissions on disbursements made on account of custom-house, &c., from June 1, 1853, to June 30, 1854, on the same principle, $461 11. Mr. Woods now claims, under the act of August 18, 1856, for compensation as commissioner for the erection of a custom-house, &c., from March 15, 1852, to July 13, 1854, say 851 days, at three dollars per day, amounting to $2,553.

The question, therefore, arises, whether the above settlement, under the act of 1822, and in view of the act of August 4, 1854, is to be regarded as final and conclusive; and if not, whether the amount claimed under the act of August 18, 1856, is to be allowed in full, as per Auditor's certificate, or whether the $621 25, heretofore allowed as superintendent, &c., is to be deducted therefrom; and also whether the per diem under the act of August 18, 1856, is to be allowed to the 14*th May*, 1853, or to the 13*th July*, 1854, and whether said per diem is to be inclusive or exclusive of Sundays.

All which is respectfully submitted. I am, &c.,

P. FERAN.
Acting Commissioner of Customs.

Hon. JAMES GUTHRIE, *Secretary of the Treasury.*

B.

TREASURY DEPARTMENT,
Office of Commissioner of Customs, October 1, 1856.

SIR: Your account for services as commissioner of public buildings at Pittsburg, Pennsylvania, has been adjusted at the Treasury, and the sum of $476 75 found to be due to you from the United States, which amount I have requested the Secretary of the Treasury to cause to be remitted to you.

The amount of the account presented by you is.....		$2,553 00
From which the following deductions are made:		
Amount overcharged by you, being from 14th May, 1853, to 13th July, 1854, disallowed, your term of office having expired 14th May, 1853, being 425 days, at three dollars per day.....	$1,275 50	
Amount charged by you for sixty Sundays, at three dollars per day, between 15th March, 1852, and 14th May, 1853, disallowed.....	180 00	
Amount heretofore allowed you for disbursements on said buildings.....	621 25	
		2,076 25
Leaving amount found due you.....		476 75

I am, &c.,

P. FERAN,
Acting Commissioner of Customs.

HENRY WOODS, Esq.,
Pittsburg, Pennsylvania.

C.

TREASURY DEPARTMENT,
Office of Commissioner of Customs, August 15, 1857.

SIR: Upon the memorial of Edwin M. Stanton, esq., asking for a restatement of the account of Henry Woods, late surveyor of the customs at Pittsburg, Pennsylvania, under an act of Congress passed August 18, 1856, referred to this office for report, I respectfully submit the following statement:

Mr. Woods was appointed joint commissioner, with Samuel Roseburg, to superintend the erection of the new custom-house, post office, and court-house at Pittsburg, March 15, 1852, and continued to act in that capacity until July 13, 1854, when the building was completed, and the contract finally closed.

Mr. Woods, being surveyor of the customs, acted also as the disbursing agent of the Treasury, for this purpose, until he retired from office on the 14th May, 1853. For the performance of the last-named service he was allowed, in the settlement of the several accounts, the

sum of $621 25, being commissions on said disbursements at two and a half per cent. limited to maximum, and sum provided in the act of May 4, 1822.

In the act making appropriation for the civil expenses of the government, passed August 18, 1856, there is the following provision:

"The Secretary of the Treasury is hereby directed to pay to Henry Woods, and to the legal representatives of Samuel Roseburg, deceased, the sum of three dollars per day each, for the services of said Woods and Roseburg in superintending the construction of the building for a custom-house, post office, and court-house at Pittsburg, Pennsylvania."

Under this provision of law Mr. Woods presented his account on the 1st September last, in which he charged his per diem from March 15, 1852, to July 13, 1854, amounting to the sum of $2,553.

By direction of the late Secretary of the Treasury, contained in his letter of September 30, 1856, a copy of which is hereto annexed, the account of Mr. Woods was settled in the following manner:

From the date of his appointment, March 15, 1852, to May 14, 1853, the date of his retiring from the office of surveyor, and on which day his service as disburing agent also ceased, being 366 days, exclusive of Sundays, at three dolars per day.....	$1,098 00
From which was deducted the amount theretofore allowed for commissions as disbursing agent.....	621 25
Leaving the sum of.....	476 00

as due him under the provisions of act of August 18, 1856; and it is for a restatement of this account, and the allowance of the sum charged, that the application in behalf of Mr. Woods is now made.

The claimant in this case having been advised, in reply to previous letters, that the account would not be reopened unless some new facts were presented which were not before the Secretary at the date of the former statement, it is now alleged in the memorial of Mr. Stanton and the letter of Mr. Woods that such facts actually exist, and constitute a sufficient basis for the review prayed for.

In regard to the settlement with Mr. Roseburg, I cannot perceive that it conflicts with the reasoning or order of the Secretary in the case of Mr. Woods.

Mr. Roseburg was not the disbursing agent of the department, nor was he in any such way connected with the Treasury as rendered his service or appointment an *ex-officio* one, and he was paid in accordance with the express provision of the act, disallowing, as in the case of Mr. Woods, his charge for Sundays.

The settlement of that claim would not, therefore, in my judgment, present the case of two settlements inconsistent with each other, as is alleged in the memorial.

The other ground assumed by the claimant is more tenable, and commends itself very strongly to your consideration.

In the letter to Secretary Guthrie no direct reference is made to the capacity in which Mr. Woods acted, but it is quite obvious, from its language, that he had in view merely his services and responsibilities as disbursing agent.

This appointment being an *ex-officio* one, terminated with the ex-

piration of his term of service as surveyor, on the 14th of May, 1853, after which his duties as disbursing agent ceased and were discharged, and the commissions received by his successor. It appears, however, from the files of the department, and the letter of Mr. Woods, that he continued jointly with Mr. Roseburg to discharge the duties of superintendent until the building was finally completed, on the 13th of July, 1854, and it is for this service as commissioner that the act of August 18, 1856, especially providing the settlement of Mr. Woods' account, was made during my absence from the city, and this distinction, I think, was not presented to the Secretary, who, I am sure, upon a proper representation of the facts, would have rescinded his first decision.

If, upon this statement of the facts, you should think it proper to reopen the case, the question would arise as to the extent of additional allowance he ought to receive under the law.

The claimant has already received $621 25 for his services as disbursing agent, and as this allowance has always been considered within the discretion of the Secretary, I think it fair to presume that none of it would have been granted if it had been known that he was to be compensated also as commissioner at the rate provided by the late act, and it would be doing him no injustice to deduct that sum, as in the former settlement.

The exclusion of Sundays, in both the cases of Woods and Roseburg, was an exception to the general rule, and I do not think it proper to make any further remarks respecting that deduction.

The memorial of Mr. Stanton, and the other papers, are herewith returned.

I am, &c.,

H. J. ANDERSON, *Commissioner.*

HOWELL COBB,
Secretary of the Treasury.

D.

TREASURY DEPARTMENT, *September* 30, 1856.

SIR: The act authorizes a compensation by the day for services, and as no services could be rendered, or were in fact rendered on Sundays, in stating the account, Sundays ought not to be included; and as Congress has fixed the criterion of $3 per day, instead of the additional commission which he was allowed under former laws, the sum which he received for other services, as an addition to his commission for other services, should also be deducted, and he should not be allowed for any services after he was out of office, as he rendered none, and Hastings acted and was compensated for the same. With these corrections, Mr. H. Woods should be allowed the balance due him.

I am, very respectfully,

JAMES GUTHRIE,
Secretary of the Treasury.

H. J. ANDERSON,
Commissioner of Customs.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 397.

WILLIAM COWING.

[To accompany Bill H. R. No. 623.]

APRIL 13, 1860.

Mr. TAPPAN, from the Committee on Claims, made the following

REPORT.

The Committee on Claims, to whom was referred the memorial of William Cowing, asking to "be paid the 20 per cent. allowed clerks in the government employment," have had the same under consideration, and report:

That the claimant was employed in the Treasury Department as a clerk, substituted for Arthur Campbell, who, in consequence of ill health, was unable to discharge the duties of the office. By the 2d section of the general appropriation bill approved August 31, 1852, it is provided "that the clerks, messengers, watchmen, and laborers, employed at an annual salary or in temporary positions in the executive and legislative departments of the government, in the city of Washington, whose annual salary does not exceed twelve hundred dollars, shall, in addition thereto, be allowed an increased compensation of twenty per cent, &c.; provided that this section shall not extend * * * to any person who does not actually discharge the duties of the office for which he receives such salary," &c.

This provision took effect from and after July 1, 1852. The claimant performed the duties of clerk from July 1, 1852, to February 1, 1853, seven months, at a salary less than twelve hundred dollars per annum. He could not draw the 20 per cent. allowed by law, because another held the appointment, nor could Mr. Campbell draw it, because he did not actually discharge the duties of the office. Under these circumstances your committee have no hesitation in saying that the petitioner is legally and equitably entitled to the amount of the additional allowance, as he did the work, amounting to $126 66, for which they report a bill, and recommend its passage.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 398.

HULL & COZZENS AND JOHN NAYLOR & CO.

[To accompany Bill H. R. No. 624.]

APRIL 13, 1860.

Mr. TAPPAN, from the Committee on Claims, made the following

REPORT.

The Committee on Claims, to whom was referred the petition of Hull & Cozzens and of John Naylor & Co., "asking pay for labor performed and materials furnished in the construction of the capitol buildings at Omaha city, in Nebraska Territory, under contracts with the governor of said Territory," have had the same under consideration and beg leave to report:

That Mark W. Izzard, then governor of Nebraska, made contracts with the petitioners for furnishing certain materials for the capitol buildings at Omaha city, which contracts are properly stated in the two accounts filed as follows:

THE UNITED STATES

To JOHN NAYLOR & Co., Dr.

To galvanized iron cornice, for capitol building at Omaha city, Nebraska Territory, as per contract made with Hon. Mark W. Izzard, governor of Nebraska, dated at St. Louis, Mo., February 25, 1856		$4,600
Credit.		
September 10, 1856. By cash	$2,000	
October 25, 1856. By cash	600	
		2,600
		2,000

THE UNITED STATES

To HULL & COZZENS, Dr.

To cast-iron capitals, for the capitol building at Omaha city, Nebraska Territory, as per contract made with Mark W. Izzard, and dated at St. Louis, Mo., November 18, 1855	$4,336

	Brought forward.....		$4,336
Credit.—By cash.	September 10, 1856.....	$2,000	
By cash.	October 25, 1856.....	1,000	
			3,000
			1,336

The petitioners allege that the balances stated on these accounts are unpaid and still justly due them, as they performed their part of these several contracts faithfully and promptly. In reply to a call made upon the Treasury Department by the Hon. F. Ferguson, the Secretary of the Treasury transmitted the following report from the First Comptroller of the Treasury:

TREASURY DEPARTMENT,
Comptroller's Office, March 16, 1858.

SIR: I have to acknowledge the reference to this office, on the 11th instant, of the letter of Hon. F. Ferguson, delegate from Nebraska, in relation to certain unsatisfied contracts entered into, in order to the erection of the public buildings in that Territory, dated the day previous, and to state, in reply, that the accounts of Hon. M. W. Izzard, late governor, show Messrs. Naylor & Co. to have received on their contract $2,600, and Messrs. Hull & Cozzens $3,000, leaving the balances still due them thereon the same as stated by Mr. Ferguson, namely, $2,000 and $1,336, respectively.

As regards the matter in general, that is, the probable amount required to complete said buildings, the information furnished by the papers at the disposal of this office is insufficient to the formation of any definite result.

I would, however, respectfully suggest that Mr. Cuming, the present territorial secretary, from his long residence in the Territory and consequent knowledge of its affairs, both public and private, might doubtless furnish a reliable estimate on which a further appropriation could be based, should such, in your discretion, be deemed a proper subject of recommendation to Congress.

Mr. Ferguson's letter is herewith returned.

I am, respectfully, your obedient servant,

W. MEDILL,
Comptroller.

Hon. HOWELL COBB,
Secretary of the Treasury.

Copies of the contracts, on file with the papers in the case, establish the facts as alleged in the petition, and as shown by the report of the Comptroller, and it appears that the only difficulty in the way of payment was the want of an appropriation out of which to draw the money. Your committee think that if these parties faithfully executed their contract with the government they should be paid such amount as may be found due them upon a proper settlement at the Treasury Department, and for that purpose they report the accompanying bill, and recommend its passage.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 399.

CONSTRUCTION OF SECOND SECTION OF ACT OF FEBRUARY 3, 1853, "TO CONTINUE HALF PAY TO CERTAIN WIDOWS AND ORPHANS."

[To accompany Joint Resolution H. R. No. 33.]

APRIL 13, 1860.

Mr. HUTCHINS, from the Committee on Claims, made the following

REPORT.

The Committee on Claims, to whom was referred the Court of Claims bill No. 65, for the relief of Jane Smith, have had the same under consideration, and report:

That the claim arises under "An act to continue half pay to certain widows and orphans," approved February 3, 1853. The second section of this act declares "that the widows of all officers, non-commissioned officers, musicians, and privates of the revolutionary army, who were married subsequent to January, anno Domini eighteen hundred, shall be entitled to a pension *in the same manner* as those who were married before that date."

The claimant applied for a pension under this act, claiming that it should commence from the 4th of March, 1848, and that it was the intention of Congress, by the passage of the act of February 3, 1853, to place widows who were married subsequent to 1800 on an equality with those married prior to that time. The Pension department rejected this construction, construing the act of February 3, 1853, as giving a pension to widows married subsequent to 1800 from the date of its passage. The petitioner, in this, and others making similar claims, applied to the Court of Claims for relief. That court decided that the true construction of the act of February 3, 1853, was to give the petitioner a pension, commencing on the 4th day of March, 1848, and reported a bill accordingly. Your committee have carefully examined the opinion of the Pension department and the opinion of the Court of Claims, referred with the bill reported by the court, and are clearly of the opinion that the construction given to the act of February 3, 1853, by the Court of Claims is correct, and that the petitioner is entitled to the relief asked for. The Court of Claims also had before it other cases depending upon the same question, and it reported bills in each case, which were also referred to your commit-

tee. For the purpose of relieving Congress from passing these several bills, should it adopt the construction of the Court of Claims of the law in question, and for the purpose of relieving the claimants from the expense of employing attorneys or agents to urge through their claims, your committee would recommend the adoption of the following joint resolution, which would be an authoritative construction of the act in question, and would enable the several claimants under it to receive their pensions upon proper application to the Pension department.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 400.

JOHN T. ROBERTSON.

[To accompany Joint Resolution No. 34.]

APRIL 13, 1860.

Mr. BINGHAM, from the Committee on the Judiciary, made the following

REPORT.

The Committee on the Judiciary, to whom was referred the petition of John T. Robertson, of Virginia, submit the following report:

The petitioner, John T. Robertson, is the son of James Robertson, jr., now deceased. The said James Robertson was, in the year 1824, appointed collector of the customs for the United States for the port of Petersburg, Va., and as such collector executed an official bond to the United States in the sum of $20,000, with said John T. Robertson, jr., and others as his sureties, and bearing date April 15, 1824. In the year 1830 said James Robertson, jr., was removed from said office of collector, and was ascertained to be a defaulter to the United States in the sum of $24,857 50. For the collection of this sum, in pursu- of the act of May 15, 1820, a warrant of distress was issued on the 24th of May, 1830, against said James Robertson, jr., and his sureties, directed to the then marshal of the eastern district of Virginia, commanding him to levy the same and collect the amount. This amount was duly levied on the property of said James Robertson, jr., and also on the property of said John T. Robertson, as his surety. The property of said James was sold, and the proceeds, amounting to $1,126 01, paid into the treasury August 11, 1830. All the property of said John T. Robertson so levied on came to him by his marriage. In order to effect the release of this property, and retain it in his family, said petitioner agreed with the Secretary of the Treasury of the United States to pay the sum of $5,000, on consideration whereof the Secretary of the Treasury agreed, per his letter of the date of July 12, 1830, addressed to Robert Stannard, esq., United States district attorney, at Richmond Va., that the property of the petitioner should be released from said claim of the government of the United States, on condition that said John T. Robertson would give "such security as should be satisfactory to said district attorney to the government

for the payment of said sum of $5,000, in annual instalments of $500 each."

By the letter of Mr. Stannard, district attorney aforesaid, of the date of August 3, 1830, he advised the Secretary of the Treasury that the petitioner had "satisfactorily secured the payment of $5,000 to the United States, in annual instalments of $500 each." To secure this payment, the said United States district attorney took from said John T. Robertson a deed of trust on said property, and also his bond to the United States of the date of July 26, 1830, a copy of which bond, marked "A," is hereto annexed and made part of this report.

Upon this bond said John T. Robertson paid instalments into the treasury of the United States from the years 1831 to October 27, 1838, amounting in all to $4,000, leaving $1,000 thereof unpaid, and which balance still remains unpaid. On the 7th of July, 1830, said John T. Robertson further paid into the treasury of the United States the sum of $4,900, all the money which he had then under his control, and which had been paid to him by his father for private purposes, but which said John T. Robertson, upon ascertaining the default of his father, concluded was the money of the government, and voluntarily and *promptly* paid the same into the treasury.

It further appears that said John T. Robertson has no other property than that which came to him by his marriage, and that he has not been able to pay the balance on his said bond by reason of other liabilities which have been thrown upon him as a surety. It further appears that two of the co-sureties of said petitioner became insolvent, and that the only remaining co-sureties were, upon suits brought against their respective executors in the United States district court for the eastern district of Virginia, in the year 1832, adjudged not to be liable on said official bond as sureties of said James Robertson, jr.

From the foregoing it appears that said petitioner has voluntarily and honorably discharged his obligation to the government of the United States to the extent of his ability, and that his co-sureties have been discharged from all liability in the premises, and have not and will not contribute to the relief of the petitioner. The committee are of opinion that, in view of all the circumstances, the government of the United States should relieve said John T. Robertson from any further liability on his said bond of date of July 26, 1830, and should discharge his real estate from all liability for the payment of the same, and do therefore report the accompanying bill in the premises, and recommend that the same be passed.

"A."

Know all men by these presents, that I, John T. Robertson, of the county of Chesterfield, Virginia, am held and firmly bound unto the United States of America in the just and full sum of ten thousand dollars, to be paid to the said States, or their assigns; to which payment, well and truly to be made, I bind myself, my heirs, &c., firmly by these presents, sealed with my seal, and dated this 26th day of July, A. D. 1830. The condition of the above obligation is such, that if the above bound John T. Robertson shall well and truly pay, or cause to

be paid, unto the said United States, or their assigns, the sum of five thousand dollars at or before the expiration of ten years from the date hereof, in annual payments of five hundred dollars, the first payment to be made within twelve months from the date hereof, and the other payments within the twelve months thereafter respectively, till the said sum of five thousand dollars be fully paid, then the above obligation to be void, or else to remain in full force and virtue.

JOHN T. ROBERTSON. [L. S.]

Signed, sealed, and delivered in the presence of—
WILLIAM H. MACFARLAND.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 401.

BENJAMIN SAYRE.

[To accompany Bill H. R. No. 99.]

APRIL 13, 1860.

Mr. HOARD, from the Committee on Claims, made the following

REPORT.

The Committee on Claims, to whom were referred House bill No. 99, for the relief of Benjamin Sayre, and the accompanying petition and papers, respectfully report said bill back, with a recommendation that it do pass.

The petitioner's claim is founded on his agreement made with the government December 18, 1832, for the erection of the bridge abutments of cut stone over the east branch of Whitewater river, at Richmond, Indiana. The contract was let by public advertisement and by sealed proposals. It was specified in the letting, by a written notice subjoined to the advertisement, that the filling-in behind the abutments and raising the road embankments from the river bluffs should be carried on and kept up by the governments as fast as the abutments were erected.

This was an important condition, greatly cheapening the work, as it would enable Sayre to haul all his stone and materials to the spot where they were to be used without rehandling or other expense, and give the advantage of plenty of room for the workmen, tools, and materials.

When the contract came to be filled out, in one of the usual printed contracts, this condition was omitted, and Sayre declined signing it for that reason. Milroy, the superintendent of the work, wished to put the contract immediately into the mail, in order to be sent to Washington, and told him if he would sign it in that form that this part of the contract should be observed. Sayre then signed it.

Subsequently, first, the contractors to fill, failed in their contract, and then it was thought best not to fill in behind the abutments for fear that the masonry would be injured while it was fresh. In consequence Sayre was compelled to haul the stone to the river at two points, each about fifteen rods from the abutments, load them into flatboats he constructed for the purpose, float them to the abutments, and then, by means of cranes which he had built, raise them on the work. This crowded workmen, tools, mortar-box, and materials on

the walls so as to hinder the work, besides requiring extra hands at loading and at the cranes. One thousand four hundred and seventy-eight perches of stone were laid above the natural surface of the ground. Sayre's claim is, in part, for the increased expense of putting up the masonry on account of this condition of the contract not being observed. The proof shows that this increased expense was from $1 to $1 77 per perch. The committee has adopted the price of $1, and the sum of $300 for cranes and flats.

During the progress of the work the engineer directed its suspension, with a view of adding eight feet to the heighth of the walls, which would have the effect of saving so much in cutting down the hills on both sides of the river. The suspension continued six weeks before the government adopted the modification, during which time Sayre and his hands and teams were idle. The proof shows that the expenses incurred, without counting the wages of the hands, was $264.

On settling with Sayre the engineer refused to allow this charge, although admitting that this was the agreement on which the work was done, for the reason that this condition was not written in the contract, although written in the advertisement of the letting, and Sayre was then referred to Congress for relief.

The committee finds this claim well supported by proof, and regard its payment eminently just.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 402.

ALEX. V. FRASER.

[To accompany Bill H. R. No. 625.]

APRIL 13, 1860.

Mr. ELY, from the Committee on Claims, made the following

REPORT.

The Committee on Claims, to whom was referred the petition of Captain A. V. Fraser, with accompanying papers, praying for certain additional allowance for rations furnished by him in California in 1849, for the crew of the revenue cutter Lawrence, report:

That, in the year 1848, Captain Alexander V. Fraser, then in command of the United States revenue brig Lawrence, was ordered on duty to the Pacific coast of the United States. Previous to his departure he agreed with the government to supply the crew of his vessel with provisions, which he would ship from New York to the west coast, at the rate of thirty cents per ration, until the government could advertise for proposals and make the usual contracts for furnishing the same. On his arrival at San Francisco, the collector of the port, who had in the meantime been appointed, was there, and it was found that provisions could be obtained in the usual way. The obligations of the petitioner under his agreement were at an end, and the collector duly advertised for proprosals for rations in two newspapers during a period of thirty days. Captain Fraser, being an officer of the government, refused to bid under this advertisement, although he then had on hand 11,200 rations and was urged by his friends to bid or to sell out to private parties. The collector states that Captain Fraser was offered an advance of one hundred per cent. by several of the first firms then in San Francisco. The lowest proposal received by the collector, under the advertisement, was at the rate of two dollars per ration. Captain Fraser declined the solicitations and offers of his friends from a delicate sense of his relation to the government, and delivered his rations to the collector, (sufficient for about ten months consumption,) at the rate of thirty cents per ration, with the understanding with the collector that he should receive such an additional sum as the Secretary of the Treasury, under the circumstances, might consider just and proper. On application to the Secretary of the Treasury, he having no authority to allow it without an appropriation, it was not paid. A protracted absence in the Pacific and other circum-

stances have delayed the presentation of the claim to Congress, until this time.

From the arrangement made between the collector and Captain Fraser, it appears that the government saved about twenty thousand dollars, Captain Fraser having received for his rations three thousand three hundred and sixty dollars; whereas, under the lowest bid, the same number of rations would have cost twenty-three thousand and seventy-two dollars, which he might have made had not a feeling of delicacy at taking advantage of the condition of things and a belief that upon a statement of the facts "a just compensation" would be allowed him in accordance with his understanding with the collector.

It appears that as late as 1853, the prices paid by the government for rations at San Francisco, was sixty-five cents per ration. The claimant asks to be allowed the difference between this price and that which was paid him, under which allowance if made, the government will still have saved the sum of sixteen thousand one hundred dollars. If the proposals under the collector's advertisement had been below the sum agreed to be paid to the claimant, his contract, according to its terms, being no longer obligatory, the collector would have been obliged to accept them and the claimant would have suffered serious loss. This advantage was secured to the government against the claimant under the terms of the contract.

When the government has taken the "private property" of its citizens "for public use," the "just compensation" required to be made under the Constitution, as indicated by past legislation, seems to have been based upon its value at the time of seizure, when that value could be clearly ascertained. If the property in this case had been so seized, instead of being delivered voluntarily, the claimant's just compensation would have far exceeded the allowance asked. Your committee does not admit any legal obligation growing out of the agreement with the collector, but considers the amount asked for justly and equitably due under the circumstances. The claimant refrained from taking advantage of the unexpected and unprecedented high prices existing at the time, which he might lawfully have done, and your committee is of opinion that fidelity to the government should not be discouraged by refusing the allowance prayed for in this case, and therefore report the accompanying bill, and recommend its passage.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 403.

STEPHEN F. WILLIS.

[To accompany Bill H. R. No. 626.]

APRIL 13, 1860.

Mr. W. N. H. SMITH, from the Committee on Commerce, made the following

REPORT.

The Committee on Commerce, to whom the petition of Stephen F. Willis was referred, praying compensation for services rendered by him as weigher and inspector at the port of Beaufort, in North Carolina, have had the same under consideration, and report:

The petitioner was weigher at the port of Beaufort, and in that capacity during the eighteen months preceding March 31, 1857, weighed for the government two thousand four hundred and twelve tons and nine hundred weight of iron. The compensation allowed by law for this service is three cents for each hundred and twelve pounds weighed. At this rate he was entitled to receive $1,447 46. Through a misapprehension of the provisions of the act establishing the weigher's fees, he was paid at the rate of one and seven-eighth cents for each hundred weight, and the sum of $904 66, leaving still due the petitioner $542 80. The petitioner also prefers a claim for services alleged to have been rendered by him as inspector, amounting to $100 75.

In reference to the last claim, while there has been no satisfactory evidence of its amount or validity produced before the committee, yet if there had been there are no circumstances connected with the case warranting its withdrawal from the proper officers of the Treasury Department, who have shown a willingness to adjust it upon fair terms.

From the other claim a deduction of $301 is insisted on by the department, which sum is alleged to have been improperly paid to the petitioner upon a former settlement, for boat and hand hire incurred by him in weighing. This expense, according to the view of the case taken, properly belonged to the office of weigher, and should have been paid out of his fees.

Without intending to express a concurrence with this construction of the law which establishes the fees of that officer, there are other facts connected with the case which exempt it from the effects of such construction.

It appears from a letter of October 31, 1855, addressed by the late Secretary of the Treasury to the collector at Beaufort, that this expense was authorized in advance. The language of its concluding paragraph is this:

"For the necessary labor to assist the weigher in the discharge of his duties, and for the hire of a boat, if one be indispensable, the proper allowance will be made at the rates usual, and the *weigher's compensation will be the fees allowed by law.*"

Under this authority the expense was incurred, and the charge thereof allowed and paid to the petitioner, and his full fees, as was then supposed, also paid him.

To the mind of your committee no other reasonable interpretation could be put upon this letter than that which seems to have been put upon it by the collector; and were it otherwise, that officer seems to have felt himself authorized in advance to direct the employment of the boat and hands at the expense of the United States, and it would not be right now to refuse payment of an expense incurred upon the faith of this assurance, and still less after a settlement and allowance of it, to bring it forward to reduce a debt already due and owing.

Your committee therefore report a bill directing the payment of the balance due the petitioner for his fees as weigher, and recommend its passage.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 404.

RICHARD CHENERY.

[To accompany Bill S. No. 77.]

APRIL 13, 1860.

Mr. W. N. H. SMITH, from the Committee on Commerce, made the following

REPORT.

The Committee on Commerce, to whom was referred the petition of Richard Chenery, praying payment for the construction of certain pavement in front of the custom-house at San Francisco, together with the resolution of the Senate for his relief, have had the same under consideration, and report:

The facts upon which the petitioner rests his application are as follows:

The petitioner is assignee of Horace P. Russ, and asks to be paid one-half of the cost of putting down a granite pavement on Battery street, which passes between the custom-house lot, belonging to the United States, and the lot known as the Merchants' Exchange, which is private property.

By an act of the legislature of California, the owners of lots in the city of San Francisco are required to keep one-half of the public street in front of their property in good repair. It is shown that Battery street was greatly out of repair, and being in constant use, the proprietors of the Exchange proposed to the collector to enter into a contract with Horace P. Russ to put down a stone pavement in the street as far as the lines of the opposite lots were concurrent, at the joint expense of themselves and the United States. This proposal was declined for the want of authority in the collector to make any such arrangement.

The proprietors of the Exchange thereupon engaged Mr. Russ to do the work, the width of the whole street to the boundaries of their lot, they paying him one-half, and he agreeing to look to the United States for payment of the other half of the expense.

It appears from a report made November 5, 1856, by Major Toner, who superintended the expenditure of the appropriation for street improvement about the custom-house, that what is called the Russ pavement, consisting of cubical granite blocks laid upon a substantial bed, had been constructed across the street the length of the front of the Exchange, and he suggests the payment of some sum in compromise

of the claim, at least as far as the government property had been benefited by the improvement.

The residue of the street was covered with the cobble stone pavement, and this kind would have been put in place of the more expensive, though more durable Russ pavement, for which compensation is asked.

The former Secretary of the Treasury declined making any allowance for the work, for the reason which he assigns in a letter to Major Toner, of December 1, 1856, that "the service was voluntary, and the work itself of doubtful value."

Repeated applications have been since addressed to the present Secretary for an examination of the claim, which he refuses to entertain, upon the ground of a prior adjudication and a rule of the department not to review the decisions of his predecessor.

In response to a communication from the committee to him, asking for information as to the claim, the Secretary expresses a doubt of the "propriety of remunerating parties for doing work not authorized by any competent authority," and suggests, if any allowance is made, that "it should be limited to the cost of laying 'the common cobble stone pavement,' such as the government has placed upon the residue of the street in front of the custom-house lot."

With the letter from the Secretary he transmits from the Office of Construction, to which the matter was referred by him, a report, in which it is stated that a cobble pavement would have answered as good a purpose as the more expensive Russ pavement, but that the work had been well done, and recommending that compensation should be allowed not exceeding the cost of laying the cobble stone pavement.

From the evidence before the committee it appears that Battery street was in a bad condition, and that when the work was done it was of great benefit to both the government and the public. The committee are fully sensible of the inconveniences that would arise from permitting unauthorized persons at their pleasure to work for the government and demand remuneration for their labor, yet the facts of the present case may well make it, in the opinion of the committee, an exceptional one.

The work was not officious, but the sanction of the local government officers was first sought and refused for want of authority; its propriety met their individual approval, and was done under their eye. It was urgently required at the time, and proved of great convenience in the use of the custom-house. It was executed under a contract possessing all the guarantees against imposition and extortion which an equal private interest could supply. The government would have paved the same surface as was paved by the petitioner's assignor, and secures by his work at once all exemption from the common obligation imposed upon private property-holders in the city to maintain one-half the street in front in repair, and is reaping the full benefits of the labor and materials furnished by another.

The committee do not think the government should, under the circumstances, enjoy the benefits of this work and their exemption from an outlay necessary but for this, without making any remuneration. Still it would be an injurious precedent to allow more than the actual

cost of the work which, but for this pavement, the government would have had to incur in putting down a less expensive pavement like that upon the rest of the street.

To effect these ends, the committee report back the resolution, and, with the accompanying amendment, recommend its passage.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 405.

J. W. NYE, ASSIGNEE, &c.

[To accompany Bill H. R. No. 628.]

APRIL 13, 1860.

Mr. CARTER, from the Committee for the District of Columbia, made the following

REPORT.

The Committee for the District of Columbia, to whom was referred the memorial of Rev. G. Hildt and eight other clergymen, the mayor, aldermen, president and members of the common council, district attorney, and one hundred and thirty-eight citizens of Washington, D. C., praying an examination and settlement of three several claims of J. W. Nye upon the government; one for services rendered and moneys expended in macadamizing Pennsylvania avenue, Washington city, D. C., in 1832; *one for furnishing horses and carryalls for the service of the House of Representatives for the* 28*th Congress; and the other for improving certain public grounds, beg leave to submit the following report:*

That at the 1st session of the 22d Congress a law was passed for macadamizing forty-five feet of the centre of Pennsylvania avenue, from the Capitol to the executive offices, putting said improvement under the control of the Commissioner of Public Buildings, and directing him to advertise for proposals. The Commissioner awarded said work to Peter Bargy, jr., of New York, and Hugh Stewart, of Pennsylvania, in nearly equal divisions, they being the lowest responsible bidders, and stipulating to perform the same at sixty-two cents per square yard. One part of the contract was as follows: "And it is further covenanted and agreed, that if the said contractors shall not prosecute the said work in such manner, or make such rate of progress as the Commissioner may deem necessary, or shall not work on such part or parts of the work hereby undertaken, and at such time or times as the Commissioner may prescribe, or shall not increase the force employed by them if so required by the Commissioner, the said Commissioner shall be at full liberty, and is hereby invested with full power and authority, to employ or contract with any other person or persons to complete the work hereby undertaken, at the proper cost and charge of the aforesaid contractors, without molestation, hindrance, or any interruption by said contractors in anywise or manner." And the contractors were required to give ample security for the faithful performance of said contract.

So severe were the terms of this contract, the contractors were unwilling to sign it until, by actual experiment, they had ascertained they could make a reasonable profit on it. To test this they were permitted to commence work without previously signing the contract.

On the 14th of August the contract was regularly signed and the necessary papers passed. On the 18th of the same month the cholera broke out in the city and raged with great violence, especially among the laborers on the work. Many were attacked while at work, and *thirty* persons died in *one night* in the vicinity of the residence of the superintendent of the work. Physicians advised the laborers to leave the city, and most of them left the work.

The contractors, under these circumstances, applied to the Commissioner for permission to suspend the work until the epidemic subsided; but they were refused, and they were required to prosecute the work, or suffer it to be relet at their risk. The contractors had now no alternative left but to prosecute the work under these disadvantages, or suffer it to go into other hands which they could not direct or control.

They then offered an increased rate of wages; but the mortality increased fearfully, and the Commissioner, *without consultation with the contractors*, employed three physicians, who visited the men twice daily, advising them not to work *early* or *late*, and not *hard* at any time. The result was a mere nominal amount of labor performed by the men. The superintendent of the work thinks the men did not perform more than *one-fourth* part as much work in a day as they did before the cholera, and their wages were raised from 62½ and 75 cents per day to from $1 to $1 37½ per day. The engineer employed by the government, who superintended the work, states under oath that he passed along the work several times every day, and took particular notice of the small amount of labor performed by the men, and that *two* men did not perform *more* work in a day than *one* did before the cholera.

The contractors were consequently compelled to employ *two hundred* men to perform the amount of work in a given time that *one hundred* would have performed in the same time had the cholera not visited Washington, or had the contractors been allowed to have suspended their work during its influence, and their wages were raised at *least* fifty per cent.

In justice to the contractors and humanity to the laborers, the work ought to have been suspended. The refusal to suffer it to be suspended, and the interference of the physicians employed by the government with the men, would seem to render the loss a *just* and an *equitable* claim against the government; and had not the contractors assigned away their claim, the committee consider that they would be *justly* and *equitably* entitled to *full* remuneration for the diminished quantity of work performed by the men, and the increased price paid them to induce them to stay upon the work.

The commissioner who had charge of the work says the contractors used a due degree of diligence in the prosecution of the work, and he considers them entitled to receive the full amount of their expenditures, and a reasonable compensation for their services and the responsibilities they were under in doing the work.

But in the case of the present claimant, to whom Bargy and Stewart assigned their claims, it would seem to present still *stronger* claims on Congress for relief. Nye had done a large share of this work as sub-contractor, amounting to as much as the additional amount claimed by said contractors upon the government. The contractors offered to transfer these claims against the government to Nye, provided he would accept them, and release the contractors from all further liability to him.

Nye had them presented to a number of members of both houses of Congress for their examination and advice, who, after a careful examination, informed him that they considerrd it a good and a valid claim, and that he would run no risk in accepting it and releasing them, and advised him to do so. In support of their advice, they referred him to a number of precedents, where Congress had granted relief, where the *justice* of the claims was not as clear as this. In consequence of this advice and these precedents pointed out to him by members of Congress, Nye took an assignment and released Bargy and Stewart from all further liability, thereby depriving himself of any security but the *justice*, the *honor*, and the *integrity* of Congress. Had he not released them, he could long ere this obtained both principal and *interest*. Nye being at that time, from sickness, unable to prepare the necessary papers for presentation to Congress, put them in the hands of the late F. S. Key, (then district attorney,) for him to prepare and present to Congress in the name of Peter Bargy, jr., and Hugh Stewart, without informing Congress of their assignment, Bargy's being presented first.

The funds for this work were intrusted to Mr. Conger, Bargy's clerk, who made his entries on page 79 of Bargy's ledger, kept by Conger, showing the amount paid by him. Other bills were paid by Bargy himself, and entered by Conger on page 2 of same ledger. Conger left the city, and went to the west at the close of the work the first year, and did not return. The book was sent to him, that he might authenticate the accounts by oath, and show why certain judgments obtained against Bargy were not entered. His affidavit says: "These judgments were for that work done in 1832, but were not entered because *not paid*, and that he entered nothing that was not actually paid out."

The books of the second year were kept and the disbursements made by Mr. Ford, clerk of Bargy; and Ford says that a considerable amount of the expenditures of 1832 were not paid until 1833, and were not entered in Conger's books. Conger's was the only book sent to Mr. Key, and the amount entered on page 79, as expenses of said work, and the above-named judgments, were all that were brought to Mr. Key's notice. Mr. Key presented to the Senate a claim for $5,645, the amount of expenses entered by Conger on page 79, and these judgments, more than the amount received from the government for that work; which passed the Senate. But while this claim was before the Committee of Claims of the House, this error was discovered, viz: the omission to include the expenses paid by Bargy, and entered on page 2 of his ledger, and the money paid in 1833 for work done in 1832, and entered by Ford, the new clerk of Bargy; and the chairman of

the committee proposed to make an amendment to the Senate bill, but the claimant (as it was near the close of the session) preferred to take the amount, and apply to Congress at its next session for the balance, rather than take the risk of losing the present bill. This bill passed the House March 9, 1839. At the next session the balance of this claim was presented to the House, and a report was made from the Committee of Claims in favor of its payment, but the House did not act upon it. Since that time it has received the sanction of several standing committees and one select committee, and has passed the Senate.

The claim of Stewart was presented in the Senate, received the sanction of the Committee on Claims, passed the Senate, sent to the House, and received the sanction of the committee of the House, but was not acted on by the House. At the next session a very able report was made in its favor by Mr. S. B. Leonard, chairman of the Committee on Public Buildings and Grounds, in which he adopted a different rule for the settlement of this claim from that adopted in Bargy's case, which was, to pay the whole expense of the work; so that had the contract been taken too low, and a loss sustained, from that or any other cause, the government would have met the loss. The principle adopted by Mr. Leonard was to allow the claimant the loss sustained from the diminished quantity of work performed by the men, and the increased price of wages paid the men to induce them to stay during the influence of the cholera. This principle would seem a correct one, as it would place the contractors in the same condition they would have been placed in had they been allowed to postpone their work during the influence of the cholera, but would allow them nothing for any loss sustained from any other cause.

This principle has been adopted by a number of standing committees and one select committee. Mr. Leonard's bill was not acted on by the House.

At the next Congress Mr. Ward, chairman of the above committee, made a report to the House, in which he sustained the principle adopted by Mr. Leonard, but did not go into an examination of the amount justly due on that principle, but reported a bill allowing him the same amount of extra compensation as had been allowed in the case of Bargy, which passed both houses, by which the claimant received $6,666 25. The balance of Stewart's loss, according to the principle established by Mr. Leonard, has, since the passage of Mr. Ward's bill, received the sanction of a number of standing committees and one *select* committee, and has passed the Senate. The amount of work done by Stewart during the influence of the cholera, at his contract price, was $10,924 60. The amount done by Bargy during the same time, at his contract price, was $7,871 40, amounting in all to $18,796, to which amount, according to the principle adopted by former committees, *one hundred* per cent. ought to be added for the diminished amount of labor performed by the men, the contractors being compelled to employ *two hundred* to perform what *one hundred* would have done in the same length of time had the contractors been allowed to suspend their work during the influence of the cholera; and to this amount add fifty per cent. for the increased price paid the

laborers to induce them to stay on the work, and from this amount deduct the amounts paid the original contractors, and their assignee or attorney, and should there remain a balance, thus found, still unpaid, that the proper accounting officers of the treasury pay the same to J. W. Nye, the assignee of said contractors, and in accordance with the foregoing principle the committee report a bill and earnestly recommend its passage.

The amount due Nye from Bargy and Stewart for this work was as large as the amount claimed by them from the government; so that, had he obtained it without any delay, he would have received no more than was justly due him for services rendered and moneys expended, of which the government has received the whole benefit.

In justice to the claimant and his family, and in consideration of the great length of time most faithfully devoted by him to the prosecution of this claim, and to relieve Congress from any *further importunity* and expense, the committee recommend its immediate settlement.

All of which is respectfully submitted.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 406.

J. W. NYE.

[To accompany Bill H. R. No. 629.]

APRIL 13, 1860.

Mr. CARTER, from the Committee for the District of Columbia, made the following

REPORT.

The committee beg leave to submit the following report in regard to Nye's claim for improving a lot of public ground:

That, by an act approved 5th of July, 1812, (Statutes at Large, first session, twelfth Congress, page 775,) the President of the United States was authorized to lease any of the public grounds in the city of Washington, for a term not exceeding ten years, on such terms and conditions as, in his judgment, would best effect their improvement for public purposes.

By an act of Congress the Tiber creek was, in 1833, changed from its original bed, between the avenue and canal, to where it now flows, leaving the old bed of said creek an open, offensive channel. This lot of ground, in which was this channel, became the receptacle of the filth and rubbish of that part of the city, rendering it a public nuisance. This lot was bounded on the north by Pennsylvania avenue, east by the creek where it now flows, on the south by the canal, and on the west by Third street, now known as the botanical garden.

In 1843 J. W. Nye proposed to the President of the United States that, if the President would give him a lease of said ground for ten years, he would fill the old bed of Tiber creek, make a sewer to convey the water from the avenue to the creek, set out a row of shade trees along the avenue and along Third street, on the borders of said lot, and put the ground in as high a state of cultivation as the other grounds around the Capitol, and would enclose the ground with a board fence, erect a carriage-house and stable near the canal and Missouri avenue, and put no other buildings of any description on said piece of ground. When the proposition was made to the President he objected to giving a lease for ten years, on the ground that it was thought by many that Congress would direct the location of the Smithsonian Institution on that lot. To obviate that objection, Nye consented to agree to relinquish said grounds should Congress see fit otherwise to dispose of them, and to remove his fence and stable from said ground whenever required by the government so to do,

without any claim on government for said improvement. When remonstrated with for making this offer, Nye said he would as willingly take it with this condition as without it, having no fear, should Congress desire to appropriate it to any other purpose after he had made the improvements, that any member of Congress would consent that it should be taken from him without making him sufficient compensation for his expenditures, and that they would as willingly do it as though it had been so expressed in the lease. Major Noland, the Commissioner of Public Buildings, remonstrated with Nye for making this offer, telling him that it would *cost at least five thousand dollars to make said improvements.*

He obtained a lease from President Tyler, on the 29th day of April, 1843, on the aforesaid conditions.

He planted the trees in November of the same year, agreeable to his contract. He was three years in making the improvements required by the lease, having expended over *twenty-nine hundred dollars* in making said improvements, besides putting three hundred dollars worth of manure on said ground, making an expenditure of about *three* thousand two hundred dollars, besides his own services, in making said improvements—he having kept no account of work done by himself—most of the work, filling up, and hauling soil to spread on the ground, being done by his own teams and hands.

The *fourth* year he raised a very large crop of corn and vegetables on said lot, the ground having been put in a high state of cultivation. The *fifth* year he had it put in a high state of preparation for a crop, but the Commissioner of Public Buildings (Mr. Charles Douglass) requested him to let the lot lie open long enough to enable him to have the creek near the avenue walled up; and when the Commissioner got the walling done, it was too late to raise anything that year. In the ensuing fall or winter this walling was washed away, and Congress having made an appropriation for walling the creek from the avenue to the canal, the Commissioner requested Nye to let the lot lie open in order to more conveniently make said improvements, promising Nye that he would get his lease extended as long as he was deprived of its use during both years, to which Nye consented. The Commissioner did not get the improvements made until winter; Nye was consequently deprived of its use that year also.

During that Congress an appropriation was introduced in the Senate for enclosing the public grounds on the north, south, and west front of the Capitol. Nye called on one of the senators to know if it was intended to include the lot leased to him, and was informed that it was not. After said appropriation was made, the Commissioner informed Nye that he was going to enclose the square between the Capitol and that occupied by Nye with a high paling-fence, and requested him to remove his *board-fence* and let the Commissioner extend his *paling-fence* around both squares, at the same time assuring him that it was in noway to interfere with him in his occupancy of said lot until the expiration of his lease, to which Nye assented. After the Commissioner had enclosed said lot, he called on Nye to remove his carriage-house and give up the lot, which Nye refused to do, and sent a memorial to the Senate to ascertain if it was their intention to de-

prive him of his lease without compensation. The memorial was referred to the Committee on Public Buildings and Grounds, but not acted upon. This Commissioner being removed in a few days, and another appoin ed, Nye proceeded to sow the lot with oats; but a short time before the oats were sufficiently ripe for cutting, the new Commissioner demanded of Nye the key of the gate, which he refused to surrender until the expiration of his lease. The next day he found the lock broken from the gate and the oats mowed and raked up for fodder; and from that time Nye was refused the occupancy of the lot. And the use of said lot for *one year* only, after the improvements Nye made, is all the compensation he has ever received.

Without the authority of Congress, the Commissioner had no right to bar his *occupancy* of the grounds under the lease of the President of the United States.

The lease was given in good faith, and with the intent that it should run its full term if Nye fulfilled the conditions; and there is no evidence that he did not to the letter.

At the commencement of the thirty-fourth Congress, the mayor, aldermen, members of the common council, and some one hundred and thirty very respectable citizens of Washington, feeling a deep interest in Nye and his *suffering family*, memorialized Congress, praying that "a liberal and generous settlement of his claims" might be made. This memorial, with the papers in the case, was referred to the Committee for the District of Columbia; they, after having fully examined the claim, finding that Nye having stated under oath he had expended in money $2,900 for improvements, and had used about $300 worth of manure on the said lot, in addition to his own labor, reported a joint resolution in his favor for the sum of $3,200, which passed the House, was sent to the Senate, and referred to the Committee for the District of Columbia of that body; when the committee examined the case they found no testimony showing what was the actual cost or worth of the work that had been done. It therefore became necessary for Nye to furnish that evidence to the committee before they would agree to report in favor of the House resolution. Accordingly, Nye procured the services of W. W. Birth, esq., a highly respectable citizen of this city, (a sworn measurer,) to measure the work, also statements made by other respectable citizens accustomed to doing such work, sustaining Mr. Birth, some of them naming a much larger sum than Mr. Birth. This additional evidence having been submitted to the Senate committee, they reported in favor of the resolution, which was passed, and the money paid.

The statement made by Mr. Birth shows that the actual cost of the work done by Nye on said lot, at a fair and reasonable price, amounts to the sum of..... $7,982 84

From which Nye makes the following deductions:

By cash received from treasury.....	$3,200 00	
By cash from sale of materials.....	210 00	
By use of square or lot one year...	1,140 40	
		4,550 40
		3,432 44

Leaving the above balance in Nye's favor, which he claims as being *equitably* and *justly* due him.

The measurement of this work was not an *after* thought of Nye, and never thought of by him until suggested by the Senate committee, and what is now claimed is not for damages, but for *services* rendered and moneys expended, which the government has received; and had Nye not made those improvements, Congress would have been called upon to appropriate that amount of money, and perhaps more, for that purpose.

The committee are therefore of the opinion that the said Nye should be paid the sum of ———, and report a bill herewith.

All of which is respectfully submitted.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 407.

J. W. NYE.

[To accompany Bill H. R. No. 630.]

APRIL 13, 1860.

Mr. CARTER, from the Committee for the District of Columbia, made the following

REPORT.

The Committee for the District of Columbia, to whom was referred the memorial of the Rev. Mr. Hildt, district attorney, mayor, aldermen, members of the common council, and one hundred and thirty-eight citizens of Washington, D. C., praying an examination and settlement of three several claims of J. W. Nye against the government; one of which was for furnishing horses and carryalls, and keeping them in readiness for the service of the House of Representatives for the 28th Congress, submit the following report:

That on the 5th day of January, 1844, the postmaster of the House of Representatives entered into a contract with J. W. Nye to furnish for the use of said House for the 28th Congress three horses and carryalls, and keep them in readiness for the service of the House. Said horses and carryalls were not to be driven by Nye, or by any one under his control, but by those in the service of the House and under the control of the postmaster. All that was required of Nye was to feed the horses and keep them for the service of the House whenever required. The postmaster likewise contracted with Nye to haul all the boxes and other articles wanted by or for the House for that Congress. After this contract had been duly signed by the respective parties, it was by the House referred to the Committee on Accounts for their examination, who unanimously approved the same as being in conformity to the law authorizing the postmaster to contract with some person to furnish property for this service. Shortly after Nye had furnished this property, and they were performing the service, the postmaster requested Nye to give up the hauling to a colored man without any remuneration therefor. Mr. Nye refused to annul this part of the contract, believing it to be the best of it. On Nye's refusal, the postmaster told him that he should make *nothing* by the contract. Nye replied that he had it in *writing*, and would abide by it; to which the postmaster replied, if Nye had it in *writing*, that he, the postmaster, could manage it so that Nye could make nothing by it. Soon after this the drivers, with the exception of Mr. Henry, commenced

driving this property in the most abusive and destructive manner. They were in the habit of taking a number of young men into the carryall; one take the lines and another the whip, and drive the horse at his utmost speed. Small boys, and those unacquainted with the management of horses, were allowed to drive them. One driver used frequently to come in after twelve o'clock at night so *drunk* that he would have to be taken out of the carryall and carried home. The horses and carryalls were frequently left standing out late at night without being fastened, and ran away and broke the carryall and harness to pieces. A respectable merchant of this city met one of these messengers driving one of Nye's horses and carryalls into Georgetown with two or three young men with him in the carryall, with the horse in a full run, covered with foam. Seeing him soon after, he told him he ought not to drive in that manner, that he would *certainly kill* the horse; to which he repiied, "that was *no* matter; that he could have a *fresh* horse whenever he wanted; and in all probability it would be but a few days before they would have some *other* person to furnish the property."

Nye frequently remonstrated with the postmaster, both verbally and in writing, of the destructive manner in which those under his control were using this property, to which not the least attention was paid by the postmaster, as sworn to by his assistant postmaster. The assistant postmaster also states, under oath, that the postmaster declared that he would take the contract from Nye if he could, and that Nye should have nothing to do about the Capitol, if he could prevent it, without giving any reason why. There does not appear, from any of the testimony, that Nye ever gave the *least* cause for this hostility to him. One of the postmaster's messengers, and one of his own witnesses, (Mr. Henry,) and his assistant postmaster both state, under oath, that they never heard Mr. Nye utter a disrespectful word to the postmaster or to any one about the Capitol. They also stated that Mr. Nye treated them with *great* kindness; that he and his son gave them their services for *one* month, assisting them in their office and learning them their routes, and carrying their mails, the postmaster and his assistants being entirely unacquainted with the business; and for this month's service Mr. Nye or his son never received or asked any remuneration.

The rapidity with which this property was destroyed is almost surpassing belief. *Three* horses were injured so that they died soon after; others rendered entirely worthless, and eight others crippled so as to be unfit for service for months, and others hired in their places. Three sets of harness and one carryall were destroyed and the others very much injured. Had this property been driven in a proper manner, *three* horses would have been sufficient for the use of the carryalls for the whole Congress; but in consequence of the destructive manner in which they were driven, in addition to the *five* he owned when he took the contract and *seven* he purchased, which were all used in that work, he was compelled to *hire* large numbers by the *day* to perform the work. Mr. Henry, one of the messengers who drove one of these horses and carryalls, stated, under oath, before the Committee for the District of Columbia, (34th Congress,) that, had the horses been

properly driven, the work would not have hurt them in the least; that he had one that had been in constant service in that work *eight* years, and was then in as good condition as when first put on the work.

Shortly after the commencement of the second session of that Congress, Nye received a letter from the postmaster, informing him that his property would be no longer used in the service of the House. Nye then sent a letter to the postmaster, and another to the chairman of the Committee on Accounts, that the property he had contracted to furnish for the use of the House was on hand, in good order, and ready at *all* times to perform said service, and that he should demand and expect pay for their services according to the terms of the contract.

This work was then performed by property owned by John Lee, while Nye's property stood idle, unemployed, ready to perform the service of the House; he neither using it himself, nor permitting any one else to use it, except in the service of the House. The postmaster's messengers were then allowed fifty cents per day each *extra* compensation, free from expense or any *extra* service, as long as they could prevent Nye's horses performing the service and have it done by Lee's, as sworn to by one of the messengers and one of the postmaster's *own* witnesses; and then these same messengers were brought forward by the postmaster to swear away Nye's contract. The Committee on Accounts were directed by the House to inquire into the refusal of the postmaster to allow Nye's property to perform the work. On the committee's calling on the postmaster for the reason for this refusal he informed them that what caused the first difficulty between him and Nye was, that Nye purchased all his feed for his horses on a month's credit, promising to pay when the money was drawn for their work; that when it was drawn Nye refused to pay; they warranted him, and he set them at defiance; which being denied by Nye, the committee sent for the man who furnished the feed, and he stated under oath that he furnished Nye all his feed after he got the contract, and that Nye paid him punctually and honorably, and that he never warranted him; and yet, it is in evidence that after this charge was proven untrue the postmaster repeated it to others.

This charge, and the insufficiency of the property, were all the postmaster made *openly* in his defence. The committee examined a large number of witnesses under oath in regard to the property furnished by Nye. It was proven to be as good as could be procured in the city, and the best ever employed in that service. One of them was considered worth more than all *three* furnished by Lee. After examining a large number of witnesses in regard to this property, the committee had it taken to the Capitol, and they went out and examined it for themselves, and they decided that it was *sufficiently good*. They then examined two men who assisted in taking care of this property, and who took them to the Capitol for the examination of the committee, to ascertain whether it was the same property that was in the service of the House while Nye furnished the property; and they stated under oath that it was the same that was in the service of the House the last day Nye's property were allowed to perform the service. During the 33d Congress this carryall contract was be-

fore the Committee of Claims of the House, and in order to do away the effect of the decision of the Committee on Accounts, that the property was sufficiently good, the postmaster presented to that committee a written statement, sworn to before a magistrate, stating that Nye *imposed* on the Committee on Accounts by presenting them different and better horses than were in the service of the House while his property were doing that work. In addition to the testimony of the two men examined by the Committee on Accounts, Nye presented his own evidence under oath, and three other disinterested witnesses who were present when the committee examined the property, that there was not a horse there for the examination of the committee that was not in the service of the House while Nye's horses were doing the work. The postmaster has presented no testimony whatever in support of his affidavit. At the termination of this contract there was due to Nye, according to the terms of his contract for hauling and for furnishing horses and carryalls, $1,979 84, of which he has since received $525; and for 853 days of extra horses to supply the place of those crippled by the wilful abuse of those in the service of the House, which, at his contract price, $1 70 per day, amounts to $1,450 10; and for horses killed or ruined, $775; three sets of harness destroyed, $25 each, $75; and for loss by destruction and injury of carryalls, $270.

In consequence of the great destruction of this property, and to enable him to comply with his contract, and have horses, &c., ready at all times when required, Nye was compelled to contract debts to the amount of $771, for the payment of which, at the termination of his contract, he had property sacrificed under the hammer worth at least $2,150, making a loss to him of $1,379.

Had Nye, at the termination of his contract, received the $1,979 84, justly his due from the House, he could have paid this $771, and would have had $1,208 84 left to help him in his business, without disposing of any of his property. Previous to and at the time Nye took this contract, he was doing a good business, keeping a livery stable and running hacks, and his family were living as well as any family in Washington city; but by the failure of the House to pay him his just due, all his property, horses, carriages, furniture, and everything he possessed, were sacrificed under the hammer for debts contracted in doing this work for the House, his business entirely broken up and he and his large family, (nine in number,) in extreme and long-continued sickness, left entirely destitute of any means of support except what his son, in feeble health, could earn until he was struck down by consumption; and then all the support they had was what his oldest daughter, (18 years of age,) could earn in a printing office, until she was struck down by the same disease as her brother was, and then her younger sister took her place in the printing office, who has since been consigned to the silent grave; and the whole family, in consequence of the destruction of his property by those in the service of the House, and the failure of the House to comply with the terms of said contract, have passed through scenes of suffering and distress which the heart sickens to contemplate. In addition to the amount due under the contract, Nye claims that he is *justly* and

equitably entitled to receive from the government what he can show what his business, which he was then doing, was worth per annum over and above his necessary expenditures in its performance, from the time his business was broken up by the non-performance of the contract on the part of the House until they pay him the amount then justly due. But as he has presented no testimony in regard to the worth of that business, the committee have not taken that into consideration.

It appears from the testimony that Mr. Nye faithfully complied with the terms of his contract, and the committee consider him *justly* and *equitably* entitled to receive the amount due for hauling boxes and furnishing horses and carryalls, and damage to property, amounting to $5,568 44, deducting the sum of $525 already received, and they accordingly report a bill for his relief, and earnestly recommend its passage. All of which they submit.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 408.

JAMES HARRINGTON.

APRIL 13, 1860.—Ordered to be printed.

Mr. MCPHERSON, from the Committee on Public Buildings and Grounds, made the following adverse

REPORT.

The Committee on Public Buildings and Grounds, to whom was referred the petition of James Harrington, report adversely to the prayer of the petitioner, for reasons given in the accompanying communication of the Secretary of the Interior, dated March 22, 1860.

DEPARTMENT OF THE INTERIOR,
March 22, 1860.

SIR: I have the honor to return the memorial of James Harrington, which was submitted to me with your letter of the 19th inst., and in reference thereto, to refer you to the accompanying copy of a communication addressed by me to the Hon. J. H. Reagan, on the 30th December, 1857, upon the same subject.

As then stated, Mr. Harrington is not one of the laborers regularly employed upon the public grounds, and hence the joint resolution of 18th August, 1856, does not cover his case. He was employed as a special watchman upon "reservation No. 2," at the rate of one dollar per day, as will more fully appear on reference to the "Blue Book" for 1857, (page 98,) and was paid out of appropriations made from year to year for taking care of that portion of the mall. Some months since, however, I authorized the Commissioner of Public Buildings to increase his compensation to six hundred dollars per annum, and he is now paid accordingly.—(See "Blue Book" for 1859, page 99.)

What he now asks, is to be paid the difference between one dollar per day and an annual salary of six hundred dollars, up to the time of the increased allowance thus authorized to be made him; but whether this shall be done or not is a question for Congress alone to determine. I certainly do not understand that he has any legal claim therefor upon the government.

Very respectfully, your obedient servant,

J. THOMPSON, *Secretary.*

Hon. EDWARD MCPHERSON,
Committee on Public Buildings and Grounds, House of Reps.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 409.

MARY HELMER, CHILD OF EBENEZER OSGOOD.

APRIL 13, 1860.—Ordered to be printed.

Mr. DUELL, from the Committee on Revolutionary Claims, made the following

REPORT.

The Committee on Revolutionary Claims, to whom was referred the petition of Mary Helmer, of Herkimer county, New York, praying for back pay due Ebenezer Osgood, her father, report:

That they have had the same under consideration, and are of opinion that the petitioner is not entitled, upon the case made, to the relief prayed for; that, in the opinion of your committee, a general law should be passed extending the benefits of the acts of 1828 and 1832 to the children of revolutionary officers and soldiers, under which the petitioner in this case would be entitled to relief. They therefore ask leave to submit the following resolution:

Resolved, That the prayer of the petitioner ought not to be granted.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 410.

LUKE PUTNAM.

APRIL 13, 1860.—Ordered to be printed.

Mr. DUELL, from the Committee on Revolutionary Claims, made the following

REPORT.

The Committee on Revolutionary Claims, to whom was referred the petition of Luke Putnam, praying for the passage of a law giving the heirs of revolutionary soldiers a pension or bounty land on proof by one credible witness of not less than one month's service, report:

That they have duly considered the same, and ask leave to submit the following resolution:

Resolved, That the prayer of the petitioner ought not to be granted.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 411.

GEORGE PARKHURST.

APRIL 13, 1860.—Ordered to be printed.

Mr. DUELL, from the Committee on Revolutionary Claims, made the following

REPORT.

The Committee on Revolutionary Claims, to whom were referred the papers in the case of George Parkhurst, a private in the war of the revolution, ask leave to report:

That no petition accompanies the papers submitted; but it appears that the said George Parkhurst served for the period of ten months and sixteen days as a private in the revolutionary war, and died in 1839, several years after the passage of the law of 1832, under which said Parkhurst was entitled to a pension. There being no proof before the committee, either by petition or otherwise, that said Parkhurst did not receive a pension during his lifetime, and there being no proof that said Parkhurst left heirs who would be entitled to apply for relief, therefore your committee ask leave to submit the following resolution:

Resolved, That the committee be discharged from the further consideration of this case.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 412.

NATHANIEL HEARD—HEIRS OF.

[To accompany Bill H. R. No. 631.]

APRIL 13, 1860.

Mr. FENTON, from the Committee on Revolutionary Claims, made the following

REPORT.

The Committee on Revolutionary Claims, to whom was referred the petition and papers of the heirs of Nathaniel Heard, report:

That this subject was before the last Congress, and fully considered by the Committee on Revolutionary Claims, who made a report, No. 201, accompanied by a bill for the relief of the petitioners, No. 449. Your committee adopt that report as a part of this, to be printed therewith, and present a bill similar in all respects to that reported at the last Congress, and recommend its passage.

IN THE HOUSE OF REPRESENTATIVES, *March* 26, 1858.

Mr. CLAWSON, from the Committee on Revolutionary Claims, made the following report:

The Committee on Revolutionary Claims, to whom was referred the petition of the heirs of Nathaniel Heard, make the following report:

From the petition and evidence in this case, it appears that Nathaniel Heard, deceased, formerly a resident of Woodbridge, in the State of New Jersey, was recognized as a general, and performed service as such in September and November, 1776, and was duly appointed a brigadier general of the militia of said State on the 1st day of February, 1777; that he was a man of wealth, and owned a large property, consisting, principally, of dwelling-houses in said town, which were destroyed by fire in 1777 by the British troops, who then occupied Perth Amboy; that he kept his headquarters at his own dwelling-house in said town, and issued his orders therefrom; that said dwelling-house was occupied as such headquarters, or as a military rendezvous, until it was burned and destroyed by the British, together with all other buildings belonging to him in said village, and they carried off or destroyed all his other property; after which

he removed his headquarters about two miles from the village of Woodbridge to a place called the "Cottage," where he resided during the remainder of the revolutionary war. Under an act of the legislature of the State of New Jersey, entitled "An act to procure an estimate of the damages sustained by the inhabitants of this State *from the waste and spoil committed by the troops in the service of the enemy, and their adherents*, by the continental army, or by the militia of this or of any of the neighboring States," passed December 20, 1781, that part of the property of said General Heard, occupied by him as a military rendezvous, and connected therewith, was duly appraised by the appraisers appointed by said State, as follows:

An inventory of sundry goods and chattels taken and carried off by the enemy and their adherents, at different times, from Nathaniel Heard, of Woodbridge, in Middlesex county, State of New Jersey:

	£	s.	d.
1776—To 600 bushels of Indian corn, 3*s*.....	90	0	0
To 350 bushels of wheat, 5*s*.....	87	0	0
To 250 bushels of rye, 3*s*. 9*d*.....	46	17	6
To 350 bushels of oats, 2*s*.....	35	0	0
To 100 bushels of flaxseed.....	30	0	0
To 40 tons of English hay, best quality.....	120	0	0
To 30 tons of salt hay.....	37	10	0
To 6 ox-cart loads of flax.....	9	0	0
To 1,000 panels of fence, two-thirds of cedar and chestnut.....	100	0	0
To 22 hogsheads of cider.....	33	0	0
To 12 head of horned cattle, being one-half 2 years old, and the others 3 years old.....	33	0	0
To 1 large riding horse, 6 years old.....	35	0	0
1777—To 2 dwelling-houses burnt, four rooms on a floor, 2½ stories high, well finished, fifty feet in length; 1 boating-house, 2½ stories high; 1 hatter's shop, well finished; 1 weaver's shop, well finished, loom and tackling; 1 wagon-house; 1 chair-house; 2 barns, and 1 large stable, 60 feet in length.....	1,500	0	0
To 1 breeding mare, near full blood, 8 years old.....	30	0	0
	2,186	17	6

General Nathaniel Heard, being sworn, said that the above inventory is just and true, and that he hath not received any satisfaction or compensation for any of the articles therein contained.

NATHANIEL HEARD.

Sworn the 17th September, 1782, before

BENJAMIN MANNING,
Appraiser.

Thomas Edgar, being sworn, saith that he personally knew the building of General Nathaniel Heard, which was burnt and destroyed by the enemy as above mentioned, and does judge they were worth £1,500.

THOMAS EDGAR.

Sworn the 17th September, 1782, before—

BENJAMIN MANNING,
Appraiser.

A true copy from "a book of register and copy of inventory of the damages done by the enemy and their adherents to the inhabitants of the county of Middlesex," taken and approved by

BENJAMIN MANNING,
JOSEPH OLDEN,
NATHANIEL HUNT,
Appraisers.

A. D. 1782.

C. J. IHRIE,
State Librarian.

STATE OF NEW JERSEY:

I, Thomas S. Allison, secretary of state of the State of New Jersey, do hereby certify that Charles J. Ihrie, esq., who hath signed the preceding certificate, is librarian of the State of New Jersey, duly appointed, commissioned, and sworn; that full faith and credit are to be given to his official attestations, and that the signature thereto is in the proper handwriting of the said Charles J. Ihrie, esq.

In testimony whereof, I have hereunto set my hand and affixed my seal of office, in Trenton, this twenty-ninth day of June, 1854.

[L. S.]

THOMAS ALLISON,
Secretary of State.

The value of the above property at the time of its loss or destruction appears to have been $5,470 45, which amount the committee think ought to be allowed, it being satisfactorily proven that the occupation of the buildings by the United States, in the manner above mentioned, was the cause of its destruction. The committee are satisfied that General Heard sustained damages to a very large amount in consequence of the destruction of his property by the enemy, other than that mentioned in the above appraisal, but they do not think the United States are properly chargeable for such losses. This view was expressed by a committee of this House when the subject was considered, April 3, 1856.—(See House Doc. No. 26, 1st session 34th Congress.) Since the date of that report much additional and satisfactory evidence has been furnished tending to prove the facts above stated. The evidence consists in the depositions of Courtland Kinney, Henry Campbell, George Justee, Moses Jaques, M. D., and Tabitha Martin, persons of credibility; also, letters of J. W. Scott,

B. F. Stockton, W. D. V. Heard, and John Thompson Mason; official certificate of Thomas S. Allison, secretary of New Jersey, proving the appointment of Nathaniel Heard, his grade or rank, and his services in the revolution; the act of the New Jersey legislature, passed December 20, 1781, and the appraisal above set forth, made in 1782 The committee therefore report a bill in favor of the heirs and legal representatives of the said Nathaniel Heard, for the value of the property appraised, and recommend its passage.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 413.

W. P. McCULLY—HEIRS OF.

[To accompany Bill H. R. No. 632.]

APRIL 13, 1860.

Mr. NOELL, from the Committee on Private Land Claims, made the following

REPORT.

The Committee on Private Land Claims, to whom was referred the petition of John McCully, of Columbia, South Carolina, have had the same under consideration, and report:

That it appears to the committee that the tract of land mentioned in the petition was entered at the land office at Newnansville, Florida, by Wm. P. McCully, the son of petitioner, in good faith, for actual settlement and cultivation, on the 6th of May, 1858; that on account of continued ill health said Wm. P. McCully was unable to make the settlement required by the graduation act to entitle him to a patent; that said William P. McCully died in November, 1859, without having made his settlement. The committee are of opinion that under these circumstances his heir or heirs are entitled to have the relief prayed for; and a bill for that purpose is herewith reported, and its passage recommended.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 414.

LEWIS W. CHATFIELD.

APRIL 13, 1860.—Ordered to be printed.

Mr. NOELL, from the Committee on Private Land Claims, made the following

REPORT.

The Committee on Private Land Claims, to whom was referred a bill for the relief of Lewis W. Chatfield, have had the same under consideration, and report:

That it appears from the rolls of the company and regiment in which it is alleged the services were rendered for which the bill proposes to give bounty land, that neither the applicant nor his witnesses belonged to the company or regiment; that neither of their names appear on the rolls. The proof fails to explain this fact; and in the absence of such proof the committee are of opinion the bill ought not to pass, and have instructed me to report the same back to the House with a recommendation that it do not pass.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 415.

JACOB AMMON.

APRIL 13, 1860.—Ordered to be printed.

Mr. NOELL, from the Committee on Private Land Claims, made the following

REPORT.

The Committee on Private Land Claims, to whom was referred a bill for the relief of Jacob Ammon, have had the same under consideration, and report:

That it does not appear that there was any such command as that in which it is alleged the service was rendered, for which bounty land is claimed, and no proof is adduced to support the claim, except the *belief* of two witnesses that such services were rendered, and this belief not founded on any personal knowledge of the witnesses. The committee are of opinion that the bill ought not to pass, and they instruct me to report the same back with a recommendation that it do not pass.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 416.

NANCY BUKEY.

APRIL 13, 1860.—Ordered to be printed.

Mr. NOELL, from the Committee on Private Land Claims, made the following

REPORT.

The Committee on Private Land Claims, to whom was referred a bill for the relief of Nancy Bukey, have had the same under consideration, and report:

That there are no rolls which show the service rendered by the husband of Nancy Bukey; that there does not appear to be any such company or command as that in which it is claimed the services were rendered. The witness upon whose proof alone the claim rests does not state particulars, but makes a mere general statement that he "knows the fact that John Bukey did serve eight months in the Indian wars in the year 1790 or 1792;" that, upon such vague proof as this, conflicting as it does with the public records of the country, it is deemed inexpedient and improper to grant such relief as is asked for in this case.

The committee therefore instruct me to report the bill back to the House, and recommend that it do not pass.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 417.

CAMILLA C. A. PONCE.

[To accompany Bill H. R. No. 633.]

APRIL 13, 1860.

Mr. BOULIGNY, from the Committee on Private Land Claims, made the following

REPORT.

The Committee on Private Land Claims, to whom was referred the petition of Camilla C. A. Ponce, have had the same under consideration, and report:

It appears that Joseph E. Sanchez, of the State of Florida, having served in the Florida militia which was called into service by the United States, became entitled to a bounty of one hundred and sixty acres of land under the act of September 28, 1850; the warrant was not, however, issued to him before his death, but was subsequently issued in favor of his son and only child, Nicholas Sanchez; it bore date the 29th day of March, 1859, and was issued upon proof filed in November 23, 1852. Nicholas Sanchez died, it seems, on the 20th of June of that year, and was of course deceased when the warrant was issued. He died a minor and unmarried, and his mother has since intermarried with Bartholo D. Ponce.

The only question in the case is, whether the United States shall enforce the rights of the minor Nicholas Sanchez on account of the non-fulfilment of the formalities prescribed by the act of 1850, or permit his surviving mother to benefit by inheriting his estate. To do so would, in the opinion of your committee, savor of harshness and be contrary to the liberal spirit of legislation under which the law of 1850 granting lands as bounty to those who had rendered military service to the country, or to their legal representatives, was enacted.

The committee, therefore, recommend that the prayer of the petitioner be granted, and report a bill for her relief.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 418.

CHARLES TRICHE AND EDWARD RODRIGUE.

[To accompany Bill H. R. No. 634.]

APRIL 13, 1860.

Mr. BLAIR, from the Committee on Private Land Claims, made the following

REPORT.

The Committee on Private Land Claims, to whom was referred the memorial of Charles Triche and Edward Rodrigue for confirmation of title to a certain parcel of land in the State of Louisiana, having had the same under consideration, submit the following report:

An order of survey was issued in 1790 in favor of the late Jean Nicolas Bertrant, for a certain tract of land on the right bank of the bayou Lafourche, having six arpents fronting on said bayou, and forty arpents in depth. Immediately after the issuing of the order Bertrant entered into the actual possession of the land, and has continued in his possession and in the possession of these claimants under him to the present time. Bertrant conveyed the upper portion of the tract, containing three arpents front by forty deep, to George Mather, to whom the same was confirmed by a commission acting under authority of Congress about the year 1812. The remaining portion was, by the negligence of the owners, not presented for confirmation at that time, but was by a subsequent commission recommended for confirmation. The title to this portion has by sundry conveyances been duly vested in the memorialists, who are still in possession of it. Your committee are of the opinion that the title should be confirmed, and do accordingly report a bill.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 419.

ERASTUS S. JOSLYN.

[To accompany Bill H. R. No. 635.]

APRIL 13, 1860.

Mr. WOODSON, from the Committee on Indian Affairs, made the following

REPORT.

The Committee on Indian Affairs, to whom was referred the petition of Erastus S. Joslyn, praying compensation for his donation land claim, situated in Washington Territory, taken and held by the government of the United States for the purpose of an Indian reservation, have had the same under consideration, and respectfully submit the following report:

It appears by the testimony in this case that the petitioner, under the provisions of the donation laws of Congress, had occupied a farm in Skamania county, Washington Territory, on the Columbia river, at its junction with the White Salmon, and proceeded to raise crops and put valuable improvements upon the land. He had made large sales of his produce, and from his facility of access, by steamboats plying upon the Columbia river, to the growing settlements at the Cascades and the Dalles, was deriving very remunerative profits, when the Indian war in Oregon and Washington Territories broke out. This compelled him and others to fly for their lives. After a short period of hostilities, peace was again restored, and in September, 1856, it became safe for the settlers to return to their homes. Mr. Joslyn was about to resume labor upon his farm, when the officers and agents of the Indian bureau took possession of it for a reservation for the Clickatat tribe of Indians, and have continued to hold it for that purpose. In so doing, however, they did not assume to question the title of the petitioner, but grounded their proceedings on what they conceived to be a public exigency, probably supposing that the government would promptly compensate Mr. Joslyn for the loss he thereby sustained. The superintendent of Indian affairs, by whose order these Indians were thus removed and located, makes the following statement to the Commissioner of Indian Affairs in relation to it, bearing date 4th November last:

"In August, 1856, I determined to remove the Indians occupying the country north of the Columbia river, from the Cathlapootle river to above the Cascades, to the White Salmon, and my orders were carried into effect by Agent Cain, assisted by Local Agent Townsend.

"These Indians resided principally in the vicinity of Vancouver and Cascade City. No previous treaty had been made with these Indians in regard to a cession of their lands. They were moved in consequence of the state of the country and the exigencies of the service. It was deemed indispensable to the well-being of the Indians and to the tranquillity of the settlements that they should be moved entirely out of the settlements to a situation offering facilities for their proper supervision, and where, in connexion with their own labor and exertions, the cost of securing them against want would be a minimum. All the facts of their removal have been reported by me officially to the department. But no report was made by me in the matter of Mr. Joslyn's land claim, for the reason that, up to the time of leaving office, I had no official information as to the value of the claim, or the value of its yearly rent.

"Although the Indians above referred to have not been treated with in the matter of a cession of their lands, yet the place to which they were moved, the White Salmon, does not lie upon land claimed by them, but is included in land ceded by the Yakima nation in the treaty at Walla-Walla, June, 1855. This treaty has not been confirmed by the Senate.

"Mr. Joslyn was obliged to abandon his claim in the fall of 1855 in consequence of the Indian war, and he has been prevented from returning to it in consequence of the Indian department occupying it as a reservation. I know him well, personally, and I know his claim personally. The statements made in the affidavits, as regards his business and the valuable character of his claim, I have no doubt are correct; in which connexion I do not mean to express an individual opinion as to the value of his claim. Those, however, who have given their opinion are personally known to me as men of intelligence and integrity.

"I am, sir, very respectfully,

"ISAAC I. STEVENS."

The material facts alleged by the petitioner are thus supported by the statement of the principal officer of the Indian department in Washington Territory, and are also verified by other and sufficient testimony filed in the case, and referred to in the brief of claimant's counsel. It is in proof that he performed the actual inhabiting and cultivation which the donation laws required; and that he was reaping large profits from his claim when this residence and cultivation were interrupted by war. It is sufficiently evident that it would have been soon after resumed by Mr. Joslyn, but for the appropriation of his land by the United States. The claimant alleges, in his affidavit, that he filed a notification of his claim, but this he was not required to do until after the government surveys were made; and it is in evidence that they have not yet been made.

Your committee are of opinion that Mr. Joslyn is fully entitled to a suitable indemnity for the seizure and occupation of his land by the government, and that his claim should be referred to the proper accounting officers of the Treasury Department for adjudication and settlement. They accordingly report a bill for that purpose.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 420.

M. M. MARMADUKE AND OTHERS.

[To accompany Bill H. R. No. 636.]

APRIL 13, 1860

Mr. WOODSON, from the Committee on Indian Affairs, made the following

REPORT.

The Committee on Indian Affairs, to whom was referred the memorial of M. M. Marmaduke and others, beg leave to report:

In 1824–'25 an act was passed by Congress to establish a public highway from Fort Osage, on the Missouri river, near the western boundary of the State of Missouri, through the Indian territory, to the nearest settlements in New Mexico. Commissioners were appointed to survey and mark out said road, and to treat with the Indians tribes along the same for the safety and protection of citizens of the United States who might travel upon it. Accordingly, in 1825–'26, the commissioners did survey and mark out the road, and made treaties with the Osage, Kansas, and Pawnee tribes of Indians, providing for the safety and protection of the citizens of the United States who might travel over it. About the same time consuls were appointed in several of the northern towns of New Mexico, and every inducement offered by the United States to encourage and foster trade with New Mexico over the route so established.

In the spring of 1828 the memorialists and others, encouraged and invited by the facilities thus furnished, provided themselves with the goods and the necessary transportation, and associated themselves together as a travelling company for mutual assistance and protection. They travelled together to Santa Fé, in New Mexico, and after having disposed of their goods, chiefly in exchange for horses, mules, and asses, they again associated themselves together to aid and assist each other in driving their stock to Missouri over the road so established by the United States. On their return to Missouri with their stock, numbering about 1,200, on the night of the 28th of August, 1828, whilst they were encamped on the north bank of the Arkansas river, near the mouth of the Pawnee fork, they were attacked by a large body of Indians, who drove off some 600 head of their stock, notwithstanding every effort was made on the part of the memorialists to prevent it, two of their party being killed and several wounded.

At that time it was not certainly known what tribe had committed the robbery, but from the testimony of persons well acquainted with the habits, customs, dress, and instruments of war of various Indian tribes, taken in connexion with the testimony of Miguel Lujan, a Mexican, who, at that time, was a prisoner among the Pawnees at their village, and who states that a day or two after said robbery a party of Pawnees returned from the mouth of Pawnee fork with a large number of horses, mules, and asses, corresponding in number and description with those taken from the memorialists, stating that they had stolen them from a party of whites returning from New Mexico, there can be no doubt that the robbery was committed by the Pawnees.

In May, 1829, one of the memorialists, M. M. Marmaduke, wrote to the Secretary of War, informing him of the robbery, claiming indemnity therefor, and asking to be advised how to proceed to establish his claim; and subsequently made a similar application to the superintendent of Indian affairs, General Clark, thus showing a knowledge of their rights, and a determination not to abandon them. At this time the memorialists were informed that Thomas Talbott, and others, were prosecuting before Congress a claim for a similar robbery committed by the same Indians on the same road in the year 1827; and not being in possession at that time of sufficient evidence to fix the robbery upon the Pawnees, and desiring to know the action of Congress upon the question of liability involved in the case of Talbott and others, before incurring the trouble and expense of prosecuting their claim, they were induced to defer the same.

By the intercourse act of 1802, which was in force at the time of the robbery, Congress guarantees "eventual indemnity" to citizens of the United States for all loses sustained whilst lawfully in the Indian country, by reason of robberies committed by Indians. By the treaty with the Pawnees made in 1825, above referred to, they stipulate that they will not molest or interrupt any citizen or citizens of the United States who may be passing from the United States to New Mexico, or returning thence to the United States, and by the treaty of 1833 they are entitled to $1,300 annually; so that they are, by their own treaty engagements, bound not to molest or disturb the citizens of the United States who are lawfully in their territory, and the United States holds in its own hands the means of indemnifying all losses sustained by their acts.

The memorialists were lawfully in the Indian territory at the time of said robbery, travelling along the highway established by the United States, for the purpose of encouraging and facilitating the commerce in which the memorialists were engaged. The robbery was committed within the jurisdiction of the United States and within the Indian territory, and from all the facts abundantly proven, and in view of the precedent in the case of Talbott and others, above referred to, as well as the uniform action of Congress in numerous cases since, your committee are of opinion that the memorialists are entitled to indemnity for the value of the animals so lost by them, respectively, according to their cash value at the time of said robbery, and therefore report the accompanying bill.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 421.

ABRAHAM LIVINGSTON.

[To accompany Bill H. R. No. 638.]

APRIL 13, 1860.

Mr. BRIGGS, from the Committee on Revolutionary Claims, made the following

REPORT.

The Committee on Revolutionary Claims, to whom was referred the petition of Abraham Livingston, report:

That the claimant is the only heir and legatee of Abraham Livingston, who was continental agent at Charleston, South Carolina, during the war of the revolution, and was taken prisoner by the British, and while a prisoner on his parole of honor died at Wilson's plantation, in Christ Church parish, on the 20th November, 1780; that in December, 1779, by order of General Lincoln, said A. Livingston drew bills of exchange, payable out of his own *private funds*, in favor of Captain Turner, commissary of prisoners, for £800 sterling, on John Hodson, of Amsterdam, for the relief of his fellow prisoners, particularly those who were in the hospital, who were suffering for "want of necessaries." It appears from the evidence in the case that there are other large sums drawn for by said Livingston, by the order and request of General Lincoln, but that the above sum of £800 sterling stands as a credit on the books of the Treasury Department, as appears by the statement of "the Register of the Treasury," which said Captain Turner *acknowledges to have received.*—(See papers marked 8 and 9.) From a thorough investigation of the case your committee are satisfied of the justice of the claim, and account for the fact that it has so long remained unsettled that the executor of said A. Livingston died shortly after the decease of said Abraham Livingston, leaving his nephew, then quite a child, his only heir, and who has since died, leaving his *widow* his legatee; they therefore report a bill for the same, with a recommendation that it do pass.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 422.

MAURICE K. SIMONS.

[To accompany Bill H. R. No. 639.]

APRIL 13, 1860.

Mr. BUFFINTON, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the petition of Maurice K. Simons, of Jackson county, Texas, for reimbursement of expenses incurred in consequence of a wound received in the late war with Mexico, and for a horse killed in the service, report:

That the petitioner alleges that he was engaged in the late war with Mexico as a beef contractor, and while so engaged he volunteered to peform a most hazardous and arduous service to the army under the command of General Taylor, at Saltillo, in bearing a despatch to General Marshall, then at Reconada, some thirty-five miles distant, while General Meñon, with a body of 1,500 Mexican cavalry, was occupying a position between them. This hazardous service was successfully performed, to the entire satisfaction of General Taylor, by the petitioner and a companion, who volunteered to perform the service gratuitously, although a large reward had been offered for volunteers to undertake it, without success.

The petitioner also alleges that on the 27th day of April, 1847, while on his way to Ceralvo for the purpose of obtaining fresh beef for the troops, he was waylaid and shot by the Mexican guerrillas, and so severely wounded that he fell from his horse, and, while lying on the ground, maintained a desperate fight with said band of guerillas, one of whom he shot through the heart and killed; that at the time of said attack he was riding a very valuable horse, for which he had been offered the sum of three hundred dollars, and which was killed by the guerillas. In consequence of the wound received as aforesaid he lay for several months at Ceralvo, and had to send to Monterey for a surgeon to attend him, and to submit to the amputation of his left leg at the hip joint. He alleges that the direct expense of his long confinement and sickness resulting from said wound was more than one thousand dollars, all which he paid out of his own funds. He is totally incapacitated for labor by his said wound, and has heretofore been allowed a pension of eight dollars per month, by virtue of an act of Congress. He asks remuneration for the expenses incurred in con-

sequence of said wound, and compensation for the horse killed as aforesaid.

Major A. B. Eaton, who was chief commissary of subsistence to the army under the command of General Taylor in Mexico, and under whom the petitioner was employed in obtaining beef for the army as aforesaid, in a certificate dated on the 5th of January, 1848, among other things, says:

"That said Simons, in company with Trahan, was, on the 27th day of April, 1847, proceeding from Monterey to Ceralvo, under the escort and protection of some United States troops, for the purpose of entering upon his duties at Ceralvo; and that, when near the place called Papagallos, he was shot in the thigh by a Mexican ranchero concealed by the chaparral, and though badly wounded—his thigh being broken close to his hip joint, and falling from his horse, and for the moment alone—he killed the ranchero from his fallen position, and defended himself in that condition until rescued by some of the party."

The meritorious services of the petitioner are set forth in a letter addressed by General Taylor to his father, of which the following is a copy:

"BATON ROUGE, LA., *January* 27, 1848.

"SIR: Your communication of the 8th instant, in relation to the case of your son, Maurice K. Simons, has come duly to hand. As he was not in the military service at the time of his unfortunate wound, he will be unable, in my opinion, to obtain any assistance from the government under the pension laws now in existence, and he will therefore be compelled to seek relief at the hands of Congress. With a view to this, it affords me great pleasure to place at your disposal my willing testimony in favor of such relief.

"While the army of occupation was lying at Agua Nueva, and but a few weeks before the battle of Buena Vista, we were mainly dependent upon the indefatigable exertions of your son and his companion, Mr. Trahan, for the fresh beef portion of our rations.

"The rapid approach of the Mexican army from the direction of San Luis had at that time entirely estranged the neighboring Mexicans from us, under the belief that our overthrow and expulsion from the country were at hand. They not only ceased to bring the important article of food to our camp, but, in their hostility, had driven their cattle from our immediate vicinity. Notwithstanding that the collection of cattle was thus rendered a matter of great labor and imminent risk, your son and his companion succeeded in supplying us with this essential part of the ration until some time after the battle of Buena Vista; and I feel safe in saying that much of our comfort, if not of our efficiency, was due to their unsparing exertions during that critical period.

"Again, on my return to Saltillo, on the night of the 22d of February, I deemed it to be of the last importance to communicate during the night an order to Brigadier General Marshall, then at Reconada, some 35 miles distant, to join me with the artillery under his command, under cover of the ensuing night. It was known to us at that

itme that General Meñon, with a body of 1,500 Mexican cavalry, was occupying a position between us, and that therefore there was an extreme probability of the messengers falling into his hands, and of their placing in his possession information of the highest importance.

"The difficult service of carrying my despatch to General Marshall was intrusted to the activity, boldness, and intelligence of your son and Mr. Trahan, who, regardless of the imminent danger attending it, gallantly volunteered for the occasion. The duty, I am happy to say, was performed with entire success, and of itself justly entitles your son, in my opinion, to the early and liberal consideration of Congress.

"With the sincere hope that his petition may meet with this success,

"I remain, sir, with great respect, your obedient servant,

"Z. TAYLOR,

"*Major General, U. S. Army.*

"THOMAS SIMONS, *Texana, Texas.*"

The committee recommend an allowance to the petitioner of fifteen hundred dollars, and report a bill accordingly.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT. No. 423

SAMUEL A. COALE, JR.

[To accompany Bill H. R. No. 641.]

APRIL 13, 1860.

Mr. MORSE, from the Committee on Naval Affairs, made the following

REPORT.

The Committee on Naval Affairs, to whom was referred the petition of Samuel A. Coale, jr., having had the same under consideration, adopt the following report and the bill accompanying, made to the House of Representatives of the 35th Congress, on the 5th of February, 1859, by Mr. Winslow:

The United States ship Levant, attached to the China squadron, was left without a purser while on that station, in consequence of the sickness of Purser B. J. Cahoone, who was invalided and ordered to return home. The commander-in-chief of that squadron gave a temporary appointment to the petitioner, which was confirmed by the Navy Department, and he entered upon the duties on the 3d of January, 1857, and faithfully performed them until January 10, 1858, when he was relieved by a regularly commissioned purser, and returned home to settle his accounts. He claims pay and rations of a purser of a sloop-of-war during that period, and the usual allowance for travelling expenses home, amounting to $2,737 50, and the committee think him justly entitled thereto. It has been the invariable practice of the government to make remuneration in like cases, and they report a bill accordingly, and recommend its passage.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 424.

JOHN McDANIEL—CHILDREN OF.

[To accompany Bill H. R. No. 642.]

APRIL 13, 1860.

Mr. BABBITT, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of James McDaniel, son of John McDaniel, a soldier of the revolution, and administrator of the estate of his widow, Margaret McDaniel, praying for relief in behalf of the surviving children of said John and Margaret McDaniel, report:

That they have had the said petition and accompanying evidence under consideration; that the evidence proves that said John McDaniel served at sundry periods in the revolutionary war as a private soldier, amounting in the whole (as he testifies) to a period of about seventeen months; that he made application to the proper department for a pension under the act of the 7th of April, 1832, to which, from the evidence, your committee are satisfied he was entitled; that a decision upon said application was suspended for further evidence, and while thus pending the said McDaniel died; that his widow, the said Margaret, to whom he was married prior to the rendering said service, instituted proceedings with a view to the obtaining of the pension to which she, as such widow, was by law entitled, in virtue of the services of her deceased husband, but died on the 7th of August, 1849, before the consummation of the said proceedings; that the present applicants are the surviving children of the said John and Margaret; that the committee are of the opinion that they are entitled to relief in the premises: but the exact length of time the said John McDaniel served not appearing, except from his own affidavit, which states it to have been about seventeen months, the committee propose to allow the petitioners the amount of pension to which the said John McDaniel at his decease, and the said Margaret at her decease, would have been entitled to for six months' services of the said John, to wit: twenty-four dollars per annum from the 4th day of March, 1831, to the 7th day of August, 1848, amounting to four hundred and fifty-two dollars, and ask leave to introduce a bill in conformity thereto.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 425.

JAMES HOWARD—WIDOW OF.

[To accompany Bill H. R. No. 643.]

APRIL 13, 1860.

Mr. DELANO, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of Sarah Howard, widow of James Howard, have had the same under consideration, and report:

That the petitioner in her declaration, under oath, states that her husband was a deputy or assistant commissary in the State of Connecticut, appointed by Doctor Joshua Elderkin, commissary, and served under him as such for several years, engaged in the purchase of clothing, beef cattle, &c., for the revolutionary army, both before and after their marriage; that she was married on the 4th December, 1779, and that her husband died on the 8th January, 1811.

In proof of her statement she produces the testimony of various witnesses taken many years ago, who were cognizant of the services of her said husband, and whose credibility is properly vouched for.

The claimant produces the testimony of General Howard, a son and co-executor, a man of marked respectability; also that of her daughter, both of whom testify to having frequently seen their father's commission, and to its destruction along with many old books of accounts and papers, by being committed to the flames after the death of their father.

The records of the comptroller's office of Connecticut show that Dr. Joshua Elderkin was commissary (as stated in the declaration) from 1776 to 1783. And the marriage is satisfactorily proven by copies of the family records.

The only question which seems to have been raised to the allowance of the case by the Pension office, was the power of Dr. Elderkin to appoint an assistant—the *length* of service and the *marriage* being admitted.

The committee deem this objection of no validity; the facts being proven that her husband served in a particular office and grade the length of time required by law, it is immaterial about the service being rendered under a specific appointment.

The act of 7th June, 1832, upon which all the widows' pension laws are predicated, requires "*service*" a given time only, whether as "volunteers" or otherwise, to entitle the applicant to a pension.

Your committee are of opinion that the evidence fully sustains more than two years' service as an assistant commissary under Dr. Elderkin; and that having been married to her husband "prior to the last period of his service," she is entitled to the benefit of the act of July 4, 1836, and therefore report a bill for her relief, with the recommendation that it do pass.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES { REPORT No 426.

NATHANIEL EMERSON—CHILDREN OF.

[To accompany Bill H. R. No. 644.]

APRIL 13, 1860.

Mr. POTTER, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of the children of Nathaniel Emerson, deceased, an officer of the revolutionary army, praying for the amount of pension to which he and his widow were entitled, report:

That, from the evidence furnished the committee, it appears that said Nathaniel Emerson served one month as a private in Captain Joseph Parker's company, Colonel Enoch Hale's regiment, New Hampshire militia, in 1776; and that in May or June of that year he enlisted in Captain Lindsay's company, Colonel Baldwin's regiment of artificers; and when the war commenced in New Jersey, Captain Lindsay and his lieutenant left, and said Emerson was assigned, by the chief engineer, to the command, and took charge of said company until they were discharged, and continued in service until June 4, 1777, when he was discharged at Ticonderoga, by Colonel Baldwin, on account of sickness; that during the latter part of said time he served as a lieutenant under Captain Jedediah Thayer. His original honorable discharge, signed by Colonel Baldwin, is produced, and there is no doubt that the above services were performed. From a monthly return, signed by said Emerson in 1777, it appears that his pay was £12 8*s.*, or $25 per month. He made application for a pension in 1818, and furnished proof of the above service, (except the term for one month,) but his claim was rejected at the Pension office on the ground that his services were not continental, within the meaning of the act of March 18, 1818. It also appears, from the records of New Hampshire, that said Emerson served as lieutenant colonel in Colonel Thomas Stickney's regiment, General Stark's brigade, New Hampshire troops, from July 23 to September 28, 1777, two months and six days, including travel home from Rhode Island. It further appears that said Nathaniel Emerson was married to Dolly Dearborn, at Cheshire, New Hampshire, on the 24th day of May, 1769; and he died at Solon, Cortland county, New York, on the 20th day of September, 1828, leaving the said Dolly Emerson a widow; and she

remained such widow from that time until the 17th day of May, 1835, when she died, leaving the following children her surviving, who are her only children, viz: Joseph Emerson, Samuel Emerson, and Wilder Emerson, and that said Joseph has since died.

The committee are satisfied that the said Nathaniel Emerson did render more than one year's efficient service in the war of the revolution, a portion of the same having been strictly of a military character, and there is no dispute or doubt as to the services having been rendered; and he, as well as his widow, having applied during their lifetime for a pension, and having received nothing, and their support for many years preceding their death having devolved upon their children, your committee are in favor of allowing a pension for twelve months' service, from March 4, 1818, to his death, September 20, 1828, and the amount due his widow at the same rate, from March 4, 1831, to May 17, 1835.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 427.

MARY HOPPER, WIDOW OF JOHN A. HOPPER.

[To accompany Bill H. R. No. 645.]

APRIL 13, 1860.

Mr. POTTER, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of Mary Hopper, widow of John A. Hopper, for a revolutionary pension, submit the following report:

That the petitioner in her statement, under oath, declares that her husband was a captain for several years in the revolution; that she was married to him on the 11th day of September, 1779, and that he died in 1824. The deposition of the claimant is supported by a mass of parol testimony, among which are the neighbors and fellow-soldiers of Captain Hopper, and several persons who were pensioners for simultaneous service in the revolution, all of whom corroborate the statement of his service as a captain for several years, and also testify to the destruction of his property by the British at Hoppertown, in New Jersey, because of his efficiency and zeal in the American cause.

The Secretary of State of New Jersey furnishes a certificate of a payment to John A. Hopper for his services; and the marriage is clearly proven, by certified extracts from the family records, to have been solemnized on the 11th September, 1779.

It is a matter of historical notoriety that this portion of New Jersey (Bergen county) was, from its proximity to New Jersey city, kept in almost constant alarm, and the militia nearly all the time under arms; but the records of the State furnish very meagre evidence of the service of its officers and soldiers during the war; and to exclude a case on the ground of want of record evidence would be to exclude many who performed long periods of service from the bounty intended for them by the acts of Congress.

The secretary of state of New Jersey furnishes the following copy of a certificate in his office:

"No. 167. Received, Morristown, November 21, 1778, of Joseph Lewis, seventeen pounds nine shillings, proc., in full, of bounty, due to my company of 23 men, of Col. Dey's regiment, at Acquacknock, under command of Brigadier General Winds, from the 23d September

to 12th October last, for which I have this day given duplicate receipts.

(£17 9*s.*) "JOHN HOPPER, *Captain.*"

The secretary of state also certifies to a payment of £48 to Captain Hopper, of Dey's Bergen regiment, of 12th October, 1778, in Book B, Auditor's Accounts, p. 63.

Your committee are fully satisfied that the evidence in this case fully sustains the claim for more than two years' service as captain, and they therefore report a bill for the relief of Mary Hopper, with the recommendation that it do pass.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 428.

PACIFIC RAILROAD.

[To accompany Bill H. R. No. 646]

APRIL 13, 1860.

Mr. CURTIS, from the select committee on the Pacific railroad, made the following

REPORT.

The select committee, to whom were referred all matters relating to a Pacific railroad and telegraphic line, have had the same under consideration, and submit the following report:

The application of steam power to propel steamboats and locomotives has become almost universal among civilized nations. Every pursuit that requires celerity, certainty, and economy of movement, goes by steam; and although it is only about thirty-five years since railroads and locomotives were invented, it would now be considered preposterous to present arguments to prove their general necessity in the public and private affairs of the State. Commercial, postal, naval, and military movements, are everywhere accelerated by the application of steam on water and land; and, to avoid dangerous and disgraceful delay in national progress, every country must make provisions in some way to compete with this new element of national power.

In the Crimean war France and England availed themselves of steam propulsion, and even constructed a railroad to the great advantage of the allies, and damage and disaster of Russia. Every country should have means of railroad transportation to salient remote points, otherwise ocean steamers can overwhelm such points before they can receive succor from home.

In the recent Italian wars the adoption of steamboats and railroads as military facilities or auxiliaries concentrated more decisive action in a three-months' campaign than could otherwise have been effected in three years. Railroads are now absolutely necessary for military protection, and might be justified in some instances on the ground of public safety, and under the legal maxim: *Salus populi suprema est lex.*

Let us apply these general principles to the condition of California, and the surrounding Pacific settlements. Our only effective commercial lines, connecting with those States, are circuitous, exterior, and oceanic, passing through foreign states by no means particularly friendly to us. The routes and sections of routes which lie on

the ocean are exposed to superior naval powers in Europe—powers that are becoming vastly stronger by recent alliances, and by the application of modern improvements. The transits by the isthmus are exposed to international wars that are frequent in the unsettled condition of the Central American states.

In the event of probable wars among other nations, therefore, and what is worse, in case of war involving ourselves, all our lines of communication that could serve for commercial and military purposes would be immediately beyond our reach, and most likely occupied by others. Hostile powers could seize upon those lines, transport an army by steam, and make a campaign in California before we could transport forces across the country to succor or sustain our friends and kindred of the Pacific shore.

A Pacific railroad is a military necessity to aid in the defence of the Pacific States; and every reflecting mind possessed of patriotic emotions will perceive that California wealth and weakness invite aggression, and demand of us immediate and decisive exertions in their behalf.

The Constitution has devolved upon Congress the power and the duty to "insure domestic tranquillity," to "provide for the common defence," to "regulate commerce with foreign nations and among the several States, and with the Indian tribes," and to "establish post offices and post roads." A railroad connexion with the Pacific would promote each and all these constitutional provisions; and every citizen desirous of maintaining the integrity of our Union, will find ample justification within some of these provisions to justify the national aid necessary to secure the actual result.

We have had conventions of the people, resolutions of States, the declarations of great political parties for years, presenting and pressing this matter upon Congress. Large sums have been appropriated and expended in preliminary explorations; large volumes have been written and published at the public expense; the President has repeatedly urged it upon Congress, and it may be regarded as a national determination that we must now take decisive action and secure successful results.

With this view of the subject, your committee have earnestly and anxiously sought a solution which would determine the magnitude of the requisite work, and the best means of accomplishing it.

Fortunately, the experience of our people in the construction of thirty thousand miles of railroad, has rendered the subject familiar to everybody, and the eighteen hundred or two thousand miles now required to connect our railroad system with the navigable waters of the Pacific, near San Francisco, is only perplexing because it passes through sparsely settled and somewhat barren portions of the republic, and because of the importance its construction will give to adjacent locations. The explorations which have been prosecuted with great ability by officers of the United States army, and the resumé by Captain Humphreys, in charge of these explorations, have furnished the careful student with ample means to determine some rational conclusion of this important subject.

A large map, drawn under the direction of Captain Humphreys

and Lieutenant Warren, (a photographic miniature of which will accompany this report,) has also aided your committee in the determination of a great conflict of views relating to the length and position of routes. As a preliminary question, your committee first determined to adopt but one line, although many able arguments were urged in favor of two or more.

Having thus determined on one road, by reference to the map which presents the lines reported practicable, it will be perceived the subject is reduced to that of considering four routes, and selecting the best of these as the basis of our estimates. Able arguments have been presented in favor of each route, and each has its specialties, both favorable and unfavorable. On either route mountains, rivers, and sterile lands must be traversed; and on other parts of each route rich valleys, gentle grades, and cultivable lands are to be found. To present the favorable and unfavorable qualities of each route, would extend this report beyond reasonable limits; and your committee having resolved upon the presentation of the central route, without prejudice to others, they will present mainly the arguments favoring the construction of a railroad on that hypothesis.

The vast consequences to our country, and to the localities, which must result from the construction of a Pacific railroad, cause this question of route to be the most difficult and exciting obstacle in the determination of congressional action. Wherever the location be made, great advantages must inure to the vicinity, and therefore every section of the republic desires and earnestly insists on that line which will best subserve its local convenience.

Some not only desire the local advantage, but dread the prestige such a work will give to a rival section. It is impossible to fully reconcile this antagonism, by urging the importance of the common national interest; but your committee have sought to accommodate this, among other considerations, by adopting a central line, upon which branches on each side, and from each end, can most easily and directly accommodate all sections of our country.

The four general lines which have been reported as practicable, and so delineated on the accompanying map, are situated as follows:

1st. The route of the Gila river through Arizona, near the parallel of 32° north latitude. This route runs very near our southern boundary, and is the route of the so-called "Southern Pacific Railroad."

2d. The route through Albuquerque, near the 35th degree. This line also runs within four degrees of the southern boundary of the western portion of the republic.

3d. The emigrant route by the Platte valley, through Salt Lake valley, near the parallel of 41°, which we denominate the central line, the general location of which your committee have adopted.

4th. The route from St. Paul to Puget's Sound, which runs between the 47th and 49th degrees, very near to our northern boundary.

The section of our country through which all these lines run, lies mainly between the 31st and 49th degrees of north latitude, and is therefore eighteen degrees wide. The bisecting, or middle line, would be the 40th degree of latitude, which corresponds nearly with the boundary between Missouri and Iowa, a southern and nothern State. Without

defining passes in the mountains, or prescribing the exact points of termini, your committee recommend this as the proximate parallel upon which centrality and the largest amount of local interest can be concentrated. It is central as to the west; central as to the numerous lines of railroads traversing the western States; central when prolonged eastward, as to our great cities, it being the parallel of Philadelphia, and central as it passes through the centre of our whole population.

All other things being equal on the plan of one road, such a location, your committee supposes, all would consider most likely to accommodate the greatest number of our people.

The shortest line.

Before stating the comparative length of different proposed routes, it is necessary to see that they start and end fairly. Radical error has been fastened upon the public mind by false presentation of the starting and ending of a Pacific railroad. Our railroad system is complete beyond the Mississippi river, and at many points lines are now progressing hundreds of miles west of the father of waters. At one point, St. Joseph, Missouri, this system of iron network has extended a line beyond the Missouri river, 250 miles west of the Mississippi, and rails are now being laid on the way to Fort Kearney. In considering a Pacific railroad, we should either start from permanent navigable rivers, or from these exterior points of the railroad system. This, all will concede, is the only fair way of comparing lines; yet such has not heretofore been the manner of starting comparative lengths.

In considering the western terminus, we must look to a safe, direct connexion with San Francisco, or to the navigable interior rivers, leading by steamboat directly to San Francisco. A terminus at San Diego or at Puget's Sound is, like the isthmus route, unsafe, being too far from the centre of the Pacific population, and too far from the great Pacific emporium, to which we should seek to have a safe communication in time of war. From either of these points to San Francisco, several hundred miles of ocean steam line is required. All lines should therefore be terminated at the bay of San Francisco, or what will be substantially the same, on the Sacramento or San Joaquin rivers, where steamers can always transport two hundred tons of freight, keeping the entire line interior, and therefore safe in time of war.

Taking this fair and only sensible way of starting and ending lines, to compare them, the relative length of these lines, taking distances from the map, which corresponds with the surveys, we have the following results:

1. The line of 32°, that of the southern Pacific railroad.

	Miles.
From Gaines to Fulton, tangent distance as shown on the map	150
From Fulton to San Francisco.....do. .....do.....	2,024
	2,170
Deduct sections completed west of the Mississippi.....	27
	2,147
Deduct also navigable waters of the San Joaquin.....	97
Total length of southern line.....	2,050

2. The line of the 35th parallel.

From Memphis to Fort Smith.....	270
From Fort Smith to San Francisco.....	2,096
	2,366
Deduct finished section west of Memphis.....	32
	2,334
Deduct proposed cut-off.....	96
	2,238
Deduct also the navigable portion of the San Joaquin.....	97
Total length of this line.....	2,141

3. Platte valley or central route.

From Council Bluffs, on the Missouri, (nearly the same as St. Joseph's,) to San Francisco, according to the measurements shown on the same map.....	1,987
Add 50 miles to equate the starting point from St. Joseph, Missouri, where the railroad now terminates.....	50
	2,037
Deduct the navigable waters of the Sacramento, as stated by Lieutenant Abbot of the Topographical Engineers.....	265
Total length of the central line.....	1,772

4. The northern route, *via* St. Paul and Puget's Sound.

From St. Paul to Vancouver, as shown on the map.....	1,800
From Vancouver to Fort Reding on the Sacramento, by survey	508
Total length of northern line.....	2,308

From this comparison it will be seen the central route is only 1,772 miles long, measuring from the exterior point of the Hannibal and St. Joseph railroad to the navigable waters of the Sacramento. It will also be perceived that this central line is not only the shortest, but it

is 278 miles shorter than the line of 32°; 369 miles shorter than the line of the 35th parallel, and 536 miles shorter than the northern line, thus proving the central route 278 miles shorter than the shortest rival route. A glance at the map will verify geometrically the relative lengths of the various routes, showing that the central line starts three degrees of latitude further west than either of the other proposed lines, and leading to the same point on a semi-diameter, it is shorter than all exterior lines. By adopting the central route, which is so much the shortest, much time and money will be saved to the United States.

Branch connexions.

The central position of this line makes the sum of the branches from the south and the north not only mathematically shorter than they otherwise would be, but it is especially convenient for branch lines, as they can follow the great river channels in approaching the main trunk. For instance, from Memphis, follow up the valley of White river; from Fort Smith, follow up the Neosho; from St. Paul, follow up the channel of the St. Peter's to the south bend of that river, and thence, via Sioux city, approach the main trunk. It will be seen that our river valleys make convenient approaches for railroad lines. But it is for Pacific branches that this line is especially convenient, and the only one that can accommodate branches to all the Pacific ports. A southern route would not accommodate Oregon and Washington. A northern would not accommodate Utah or southern California; but from the central line you can branch from the Salt Lake valley so as to accommodate all those western States and Territories.

This convenience of branches, especially to the Pacific ports, seems to conclude the argument in favor of the central route. To make a trunk line, inaccessible to Oregon and southern California, by reasonable branches, would be absurd, and accomplish only a fraction of the objects proposed. Puget's Sound is especially important in a military and commercial point of view, and our commencement of a railroad system should look to an early connexion with that growing and commanding point on the Pacific coast. The corresponding bay of great importance, in the southwest, is the Gulf of California, and although that inland sea does not belong to us, we must look with interest and favor on such honorable arrangements as will give our Pacific marine the benefit of such a harbor, and our railroad system early and easy connexion with it.

Practicability of a central route.

It would be folly to present only the bright spots in the long and mainly unsettled, uncultivable line of proposed route for a Pacific railroad, or to pretend the route is uniformly easy. There are bad and good, rich and barren, rough and smooth sections on each line. The best proof of the greater advantages existing on this central route is found in two facts:

1st. That nine-tenths of the overland emigration has adopted this route; and, 2d, the settlements are large and rapidly augmenting only on or very near this route.

The new gold mines of Pike's Peak, the forty thousand Mormons,

and the new and important Washo silver mines, will all be accommodated by a central route; and the latest news from these new mining districts is exciting a new flood of emigration unparalleled in former years.

But your committee will present the line as shown by the government surveys, this being the most reliable data upon which to base public legislation.

The official surveys on this route have been made by Colonel Frémont, Captain Stansbury, Lieutenant Beckwith, Colonel Lander, Lieutenant Bryant, and Lieutenant Warren, who, at different times, have examined the different sections; and by uniting their testimony a very correct idea may be formed of the entire route. The travel which passes through Missouri and Iowa concentrates on the Platte valley, which affords an easy approach to the Rocky mountains for all kinds of roads. Speaking of this first section, Lieutenant Warren says truly: "The Platte river is the most important tributary of the Missouri in the region under consideration; its broad and grass-covered valley, leading to the west, furnishes one of the best wagon-roads of its length in America. From its mouth to the forks, the bluffs are from two to five miles from the water, making an intermediate bottom valley of from four to eight miles wide. From the forks to Fort Laramie, the bluffs occasionally come down to the water's edge, and the road has to cross the points of the ridges. From Ash Hollow to Fort Laramie, the road is sometimes heavy with sand. Fine cotton-wood grows along the banks and on the islands, from the mouth to Fort Kearney; from here up it is scarce, and of small size. Cedar is found in the ravines of the bluffs, and in the neighborhood of the forks, and above. The river is about a mile wide, and flows on a sandy bottom. When the banks are full it is about six feet deep throughout, having a remarkably level bed; but it is of no use for navigation, as the bed is so broad that the water seldom attains sufficient depth, and then the rise is of short duration. The water is sometimes so low, as was the case last season, that it can be crossed anywhere without difficulty, the only care requisite being to avoid quicksands."

The settlements are now extended one hundred and fifty miles up the Platte, and following the South fork and Lodge-pole creek, as proposed by Captain Stansbury and Lieutenant Bryan, this testimony only relates to three hundred and seventy-three and a half miles, as Lieutenant Warren followed the North fork when he speaks of the road being "sometimes heavy with sand."

Lieutenant Bryan extended surveys up the South Platte and Lodge-pole creek to the mountain passes. It is in this neighborhood (Cherry creek is fifty miles south) the new gold discoveries are made, and miners are gathering by thousands. According to Lieutenant Bryan, no serious difficulties occur in this section, except a scarcity of timber. He says, (volume 2, part 2, Executive Documents, 1857–'58, page 478:)

"From the Laramie crossing to the head of Lodge-pole creek the supply of good water is constant. The grass is generally short, as on all the uplands, though there are spots occasionally met with where a more liberal supply than usual may be had. From the head of Pole

creek, over the west fork of Laramie river, to Bridger's pass, there is but one route to be followed; and, as it has already been described, I need not speak of it again here."

We suppose he refers to the report of Captain Stansbury. Large groves of pine and other timber have been discovered by the miners some thirty or forty miles south of Lodge-pole creek. The details of Lieutenant Bryan's report are favorable, but too lengthy. We refer to his detailed report.

From the head of Lodge-pole creek to Salt Lake City, we pass the Rocky and Wasatch ranges of mountains. We also pass the valley of Green river, where, for two hundred miles, at various places, coal is found in strata from two to ten feet thick. Captain Stansbury explored this region, and we refer to his own work, from page 217 to page 273. On page 226, speaking of coal, he says:

"The out crop was about eight feet wide by four feet thick."

At another point, one hundred miles further east, he says, page 234:

"At a point thirteen miles from the mouth of Bitter creek we found a bed of bituminous coal cropping out of the north bluff of the valley with every indication of its being quite abundant."

On page 236, speaking of the portion three hundred and thirty-one miles further east, between a summit of the Rocky mountains and Salt lake, he says:

"We broke out from a bed twelve feet thick some beautiful specimens of excellent bituminous coal, which burned in our camp-fires with a clear, yellow flame."

At longitude 108°, latitude 41°, he says, page 236:

"Sandstone cliffs bound the valley on the north side, in which I observed a stratum of coal which was exposed for a hundred yards and was at least ten feet in thickness."

Having closed his survey of the route, he says, page 142:

"With the exception of the rough ground near the head of the Muddy, which offers no obstruction of consequence, a perfectly feasible, and indeed a most excellent route, whether for a wagon or railroad, has thus been traced, presenting fewer obstacles to the construction of either than almost any tract of the same length in the country. The grades will be easy, the bridging comparatively light, and with the exception of the crossing of the valley of the Muddy, where a long and heavy embankment may be required, the cutting and filling will be entirely within moderate limits. In no case will an inclined plane be required; and the route is more than usually free from the objection of high and narrow cañons, liable to be filled up or obstructed by snow during the winter."

Again, page 261, speaking of this whole, most remote, and difficult section:

"A glance at the map and a little attention to the table of latitudes will show that from Great Salt Lake City to the head of Lodge-pole creek, a distance of four hundred and eighty-four miles, the difference of latitude is but 35′ 42″; and while the greatest northing made by the proposed line is but little more than 20′ north of Lodge-pole creek, the greatest deviation to the south is but little more than three miles;

so that the entire route through that long distance varies but a trifle from a straight line."

And speaking of this route as preferable to going sixty miles further north by the South Pass, he says, page 262:

"A careful observation of the ground on both routes has enabled me to form a general comparison between them, and has led to the unhesitating conclusion that, in point of diminished distance, easy grades, freedom from serious obstacles, and convenience and abundant supply of materials for construction, the line of this reconnoissance presents a trace for a road that is not only perfectly feasible but decidedly preferable to the other."

Lieutenant Beckwith corroborates this testimony (see volume 2, page 54, "Explorations and Surveys for a Railroad Route," &c.,) when he speaks of "the Green river basin, and the coal basin of Green river, from being abundantly supplied with that important article. It is more than two hundred miles in extent from east to west, and has a variable width, north and south, from twenty to over a hundred miles."

Speaking of snow in this region, about which much is said against a central route, and fearful in any country where houses are not yet constructed, he says:

"The trading post at Fort Bridger has been occupied constantly for the last ten years; but the district was much frequented before by traders and trappers, whose effects are always transported by cattle, which subsist themselves throughout the year by grazing—a fact remarkably significant of the winter climate and depth of snow which falls in the district, the general elevation of which may be safely taken at seven thousand feet above the sea. And it is said by these people to be a well-established fact, that horned cattle, of which their stock largely consists, cannot so subsist when the snow is deep enough to bury their eyes and enter their ears as they feed."

Our troops spent the winter of 1857–'58 at Fort Bridger, and the miners have spent the two past winters in the Rocky mountains. They have not been seriously annoyed by snow; and although the valleys are from 5,000 to 6,000 feet above the sea, the climate is comparatively mild. The Rocky Mountain "News," of the 14th ultimo, published at Denver City, says: "We have not had eight inches of snow this winter, and the grass now begins to grow, and the slopes look green." But railroad companies now overcome snow obstructions by the use of board fences to check drifts, and in the use of the snow-plough and running the engines to clear the track. Snow is no longer a railroad obstruction worthy of much consideration anywhere, and is no more in the arid regions of the Rocky mountains than in the eastern States of the same latitudes.

So much for the route to Salt Lake, to the Mormon settlement, where we have a population of at least forty thousand, and an army of two or three thousand, with which we must have constant communication. From Salt Lake City to the Nevada mountains, a section of about six hundred miles, we have the valley of the Salt Lake and Humboldt river, level or easily-graded plains. But the line is interrupted by the Humboldt mountains, which, however, are not difficult to pass. Scarcity of timber is the principal difficulty encountered.

Cedar is found in the Humboldt mountains, but in places ties may have to be transported from fifty to sixty miles. The description of this section, comprising the Mormon settlement and the Carson Valley settlement, is too well known to require much consideration. Its particular features are stated in the report of Lieutenant Beckwith, volume 2, pages 60 to 70, Explorations.

Captain Simpson, of the United States topographical engineers, has recently opened a shorter route, considerably south of the Humboldt, which is now travelled by the emigration, and was followed in the stage-coaches by Horace Greeley, esq., who considers it practicable for a railroad. This route is supplied with timber and water, and for these reasons may be found preferable to the Humboldt valley; but no *survey* has established the practicability of this line for a railroad, and your committee, therefore, retain the projection and distances as prescribed by Lieutenant Beckwith on the level plain of the Humboldt river. By either the Simpson route or Humboldt valley we arrive at the new silver mines of Nevada Territory, where agriculture and mining are attracting thousands, and building up a new Territory. This settlement is at the eastern base of the most precipitous and difficult mountain range, the Sierra Nevada. Carson river flows down this eastern slope, and sinks in the plain with the Humboldt river. Beyond the summit of this Nevada mountain Sacramento river flows down its western slope, and, passing Sacramento city, the capital of California, enters the Pacific at San Francisco. With silver on one side and gold on the other, the Sierra Nevada mountain is now, summer and winter, traversed by thousands; and the necessity of a railroad is, therefore, greatest where the difficulties are most formidable. Many new routes have been proposed, but your committee will present that which was surveyed and reported by the government employés.

In passing this mountain, you have to rise twelve hundred feet and descend twenty-four hundred feet. The rise is easy, and the descent is distributed over sixty-seven miles. On the summit of this mountain there is a level plain some thirty or forty miles in width. After what we have seen in passing the Alleghany mountains, there can be no doubt of the practicability of passing this mountain through the Madalin, Noble's, or Carson River Pass. Rather than go a great distance out of line to avoid such a mountain, we would adopt the improved inclined planes, which some insist are now the cheapest way to overcome elevations; or we may adopt the zigzag or Y *boyeau* construction that has occasionally been successfully used on the Baltimore and Ohio railroad.

But there is no need of such an expedient. The surveys of Captain Beckwith show the probability of passing the Nevada mountains by using grades that have been successfully tested. The most formidable obstacle in the route which he seems to prefer is two cañons, through which the Sacramento runs, and through which it is proposed to carry the railroad.

As this is the great obstacle, we give his description, and ask railroad men to consider it for themselves. After describing the easy ascent from the east to the broad, flat, timbered summit of the Neva-

da, and after proceeding with no serious difficulties to the declining plain, from whence he could overlook the vast valley of the Sacramento, which leads to the Pacific ocean, he thus speaks of this cañon of the Sacramento:

"This cañon is a formidable obstacle to overcome. Its entire length is thirteen and seventy-four hundredths miles, surrounded by an open valley of similar extent, which is followed by another cañon eight and ninety-five hundredths miles in length, of the same character as the first. The river, as it enters the first cañon, is from thirty to forty feet wide, flowing with a rapid current over a bed of rocks, and it is sixty feet wide as it enters the second cañon, just below the junction of Fall river, and flows over a similar bed with an equally swift current.

"At their heads, these cañons are vertical trachytic rocks, eighty feet high, with large masses of fallen rocks accumulated at the bases of the walls. The first is cut through a high plain for six miles; the plain then rises somewhat, and is surmounted by high, sloping rivers, rising five or six hundred feet above it, and the cañon becomes much broader, and its walls more elevated for two miles, to where it makes a large bend to the north; below this the walls gradually decrease, and in two miles the cañon opens to the width of half a mile, which it preserves for three miles to the succeeding valley. The highest portions of the walls rise two hundred feet above the stream, with an accumulation of fallen rocks extending halfway to the top. For eight miles the course of the cañon is direct. It then makes a long bend to the north, and is followed by two or three short curves, but with a generally direct course. Its open part is timbered, and its walls less abrupt; and on the right bank of the stream the mountains, followed by the river, extend considerably into the plain of Fall river. The most favorable line for the passage of a railway leads along the plain on the north side of the river, and descends the sides of the rocky hills which surmount it, and continues on the side of the mountain until it enters the plain of Fall river. The second cañon is only less formidable than the first because it is of less extent."

It will be perceived the river is small—from twenty to sixty feet wide. The cañon is straight, or has long curves. Loose piles of rock lay alongside of the stream, and we do not perceive why these loose piles of rock may not be distributed partly in the stream and partly out of it, and with the aid of side cuts follow near the bed of the stream, instead of the side of the mountain.

Be this as it may, Lieutenant Beckwith has not only carefully described these two gorges, which, taken together, only extend over 22.69 miles, but he shows how they may be overcome or avoided. After reading his report any practical railroad constructor will be convinced of the practicability, and, in some respects, interesting portions, of the railroad route.

The survey of Lieutenant Beckwith terminates at Fort Randall, on the Sacramento, where the river is navigable for small craft, and the valley affords an easy descent for a railroad to the bay of San Francisco. Having finished his review of his labors on this central route, he concludes his report as follows:

"Further surveys on this route would, doubtless, develope important improvements at various points, and at two, at least—one from the shore of the lake near Stansbury's island, by Pilot Peak, to the pass in the Humboldt mountains, and the other in crossing from Humboldt river to Mud lake—would probably diminish the length of the line by one hundred and six miles. The grades, also, are doubtless susceptible of material improvement by minute surveys with the spirit-level. There is an abundance of good stone for bridges and building purposes, at short intervals, upon all parts of this line. Water is also found in abundance for railroad purposes throughout those portions of the Sierra Nevada, Wasatch, and Rocky mountains explored, and also at a few miles intervals in the basin, where it usually occurs in springs at the bases of the mountains, and in small streams descending from the higher peaks and ridges to the adjacent plains.

"And a simple reference to the map of the route will exhibit an important feature in the facts that, in its remarkably direct course, for its great length, from the Missouri west to the Pacific, it follows the ascending and descending valleys of permanent rivers and their tributaries for more than two-thirds of its entire length, and that water is abundant on all the intermediate spaces, affording the means of irrigation to a large extent wherever the lands are suitable for it; and that they will doubtless be found so wherever the sage plains are luxuriant, may be inferred from the rich aromatic odor and resinous properties of that plant, and from the exceedingly nutritious character of the grass scattered through it. And it is a well-known fact that the Mormons produce some of their first crops from reclaimed sage plains.

"By reference to the map and accompanying tables of latitudes, it will be seen that the route explored conforms throughout to a remarkably straight line, deviating west from Fort Bridger only at the Timpanagos cañon, if that line be preferred to the Weber, and on the northern portion of the Sacramento river."

The Secretary of War, Hon. Jefferson Davis, in his summary report of 1855, although he favors the southern route, thus speaks of this central, after he had reviewed the surveys concluded by Lieutenant Beckwith:

"Although the route passes over elevated regions, the sum of ascents and descents is the next least after that of the forty-seventh parallel, which is to be attributed to the table-land character of the mountain districts. It partakes of the character of the route near the forty-seventh parallel in the long and severe winters on the plains east of the Rocky mountains and westward to the Great Basin.

"The cost, as estimated in the office, from Council Bluffs to Benicia, a distance of 2,031 miles, is $116,095,000.

"The statistics of the route will be found in the table appended.

"The survey of the western portion of this route by Lieutenant Beckwith has resulted in the discovery of a more direct and practicable route than was believed to exist from the Great Salt Lake to the valley of the Sacramento. Since his report was made, a brief communication from Brevet Lieutenant Colonel Steptoe, commanding the troops in Utah, has announced the discovery of a still more direct route from Great Salt Lake to San Francisco. The new portion of this route

passes to the south of Humboldt or Mary's river, and, entirely avoiding the difficulties experienced by travellers along that stream, proceeds to the valley of Carson river, being well supplied with water and grass.

"From Carson river it crosses the Sierra Nevada by the passes at the head of that river, and descends to the valley of the Sacramento, being practicable throughout for wagons.

"In the absence of instrumental surveys affording data for the construction of profiles, no opinion can be formed as to the practicability of this route for a railroad. Should it be found practicable, however, it will lessen the length of the route of the forty-first parallel, and still further diminish its difficulties, already known to be less than on any other route except that of the thirty-second parallel."

The route here mentioned south of the Humboldt corresponds mainly with that to which we referred as "Simpson's route." It is the route now travelled, and may, as the honorable Secretary says, be adopted for the railroad, thereby still further diminishing the length of this central route.

Although your committee would avoid a comparison of routes in regard to the topographical features of each, they would not have it inferred that they regard the obstacles on this central route as any more formidable than those found on each of the other routes. All the surveys have been made with barometrical observations to ascertain heights, and stations have been erected from ten to twenty miles apart. These observations are sufficient to determine the general features of the country, and furnish sufficient information for practical men to judge of the practicability of the routes.

Without more minute surveys, comparative grades, curves, and cost cannot be determined with such accuracy as to make comparisons safe; and your committee has therefore only spoken of comparative *length* and *position*, which are based upon more certain and satisfactory data.

Cost of construction.

The practical difficulty which is presented in estimating the cost of a Pacific railroad, is the unsettled and comparatively uncultivable portions of the country beyond the 100th degree of longitude. Although the country is not generally arable, the valleys of the streams are cultivable; and most of the other portions are good grazing lands, affording pastures for numerous herds of buffalo, antelope, mountain sheep, and, where settlements exist, horses and cattle. Settlements and improvements are rapidly progressing on the central route, and what now seems a desert waste will be inhabited in advance of the progressing railroad. Yet it will be necessary to look elsewhere for the men, and most of their supplies, during the construction of the road. The central route, fortunately, is most accessible to men and provisions, and the greater settlements along the line, and especially the Mormons, in Utah, would furnish laborers, provisions, and other advantages to aid the progress of the work.

There are four general items in the cost of a railroad. These are the *roadbed*, the *ties*, the *iron*, and the *rolling stock*. Iron and rolling stock following the constructed road would cost very little more

than on other western roads. The extra cost would mainly relate to the other two items, roadbed and ties. The grade is very easy on a great portion of the central route, as the Platte valley, Salt Lake valley, and the Humboldt valley are extremely smooth and level. All the rivers can be easily bridged; the country is healthy; the climate is neither very hot nor very cold; miners are busy on all sides of it in search for gold and silver; and the moving emigration on this route, together with the mails already established, will all help to relieve it of a portion of the loneliness and desolation which exists on all the overland routes. By adopting a temporary grade, which can be improved afterwards, the track-laying may commence at each end and proceed with great activity towards the mountains, where men in advance should prepare the more difficult passes. It is not within the province of your committee to present items of estimates, but by thus showing that the extra cost mainly relates to the grade and ties, they cannot perceive how it is possible for such a road to cost a vast deal more per mile than other railroads. The cost of western roads does not exceed forty thousand dollars a mile, and some are built for much less. Add, if you please, twenty thousand dollars a mile for extra cost of grading and procuring ties on a Pacific road, and you have a total of sixty thousand dollars a mile. If you start with two converging branches, which are to unite within two hundred miles from the Missouri, the entire length of line, including the branches, would be, say, two thousand miles, and the entire cost one hundred and twenty millions of dollars. Looking at the valley of the Platte, sixty thousand dollars a mile would appear enormous; while looking at the mountain passes of the Wasatch and Sierra Nevada, it would appear too small. As the easy portion far exceeds the mountainous and rough portions, your committee believe this sum a safe approximate estimate of the entire cost of the road.

Probable results.

A railroad once made, connecting the Atlantic and Pacific, through a healthy inhabited portion of this continent, will sensibly affect the commerce, travel, and social intercourse of the world. Europe and Asia will be brought in effect much nearer to each other, and we will be much nearer to Asia. Travelling lines will not only be shortened, but they will be much more speedy, healthy, and inviting, by interposing the variety of land scenery for the dangers and monotony of the sea. It is not possible for your committee to make any estimate of pecuniary results which will grow out of such a stimulant to exterior commerce; but they are confident such a line of communication will be largely augmented by new elements of foreign intercommunication.

Results within our own country are more easily approximated. The travel across the continent will go by the railroad. You can now go from any of our cities to St. Joseph, Missouri, by railroad for thirty-five dollars. The remaining—say two thousand miles to San Francisco, at three cents per mile—nearly double the rates on this side—would be sixty dollars; add for meals and extras, ten dollars; total from eastern cities, by railroad, to San Francisco, one hundred and

five dollars. A passage by any of our *foreign* routes costs near two hundred dollars. By railroad you could go in six or eight days. It would be much *cheaper*, *quicker*, and *safer* for passengers travelling from ocean to ocean, and they will all take the railroad route. This demonstration is irresistible and incontrovertible. If the extremes would choose this route intermediate or way travel between the cities on the Atlantic and the Pacific would *a fortiori* adopt this route. There is, as all know, a creative power in a railroad which will double or treble the present California travel. There would then be at least one hundred thousand passengers pass one way, or two hundred thousand trips per annum. These, at sixty dollars each, for the section west of the Missouri line, amounts to the sum of..... $12,000,000 00

All the gold would be transported by rail, and pay three per cent. on fifty millions.....	1,500,000 00
The mails at prices heretofore exceeded by land and ocean.....	1,500,000 00
Transportations of men and munitions of war, same as it now costs for way and through transportations.	5,000,000 00
Total.....	20,000,000 00

Freight will divide; some will go round by water, but a very large portion will go by rail. The distance from Boston to St. Joseph is nearly as great as it is from St. Joseph to San Francisco. It is obvious, therefore, that freight transported between the Mississippi valley and San Francisco would not go or come by our eastern cities, but it would travel direct across by rail. Where the distance to San Francisco by rail is 2,000 miles, (say from Missouri and Iowa,) at two cents per ton per mile, freights to and from San Francisco would be as follows:

A ton.....	$40 00
One hundred pounds.....	2 00
One pound.....	2
Bushel of grain, 60 lbs.....	1 20
Barrel of flour.....	4 00
Barrel of pork.....	6 00
A cow, 1,000 lbs.....	20 00
Box of dry goods, 300 lbs.....	6 00

To determine the cost from ocean to ocean, it is sufficient to add 50 per cent. to these figures.

An inspection of these prices will furnish some means of judging what will go by rail and what will travel by ocean.

The *interest*, *risk*, *insurance*, *and transportation* by water will average, say, five per cent. The first three items being much greater by water than by rail, valuable light goods will go cheapest by rail, while cheap heavy goods will go cheapest by water.

A package worth one dollar, weighing less than one pound, would go from New York to San Francisco by rail; as the freight, three cents, added to risk, insurance, and interest, would probably be less

than five cents, the sum of these items by water. *Therefore everything worth a dollar a pound would go by rail.*

A dollar's worth of cloth, silk, gold, silver, notions, many articles of merchandise, will weigh less than a pound, and therefore go from New York and San Francisco through by railroad. Besides the difference between ten days' returns and ninety days is of so much importance to mercantile operations, a much greater share would go by rail. In fact, we are told that over three hundred tons are annually forwarded now by one express company, at from 20 to 30 cents a pound, requiring, as now conveyed, from 25 to 30 days. How much more, then, would go, at three or four cents a pound, if conveyed in ten or twelve days? Certainly ten or twenty times as much. Without much doubt, therefore, the through and way freight, and the way passengers on the Pacific railroad, would not be less than ten millions a year, which, added to the sum before stated, makes the gross proximate income per annum $30,000,000.

This sum is sufficient to pay current expenses, and also a fair dividend on the estimated cost, $120,000,000.

If it be said the items which are here enumerated are overestimated, it may be replied, that before the road can be completed another decade of our history will have transpired, and western progress will more than compensate for possible errors.

Besides, this estimate makes no account of new elements of business that will be created by a new channel of commerce so important to other nations of the world, and so sure to develop new industrial pursuits in our own country. This creative power of railroads has never been overestimated, and the only mistake railroad men have made in the productive results of their investments has grown out of the multiplicity of rival roads, and the consequent reduction of prices. A Pacific railroad is not liable to competition, for if others are made, they will be too remote to compete for local business, and they will not be undertaken for the through business until it has been clearly demonstrated there is enough to well compensate two or more roads.

The plan of execution.

Your committee have found the greatest diversity of opinion as to the mode of accomplishing the object, and for years the inventive genius of men has been directed to schemes for constructing a Pacific railroad. It is generally conceded that government must, in some way, encourage the work, to induce private capital to take hold of it. After much consideration, your committee have adopted the plan of advancing government 30 year bonds, bearing 5 per cent. interest, in payment for telegraph and transportation service, which is to be executed during the progress and after the completion of the work. To secure the government, they are to be advanced only as sections of fifty miles are completed, beginning at each end with what is supposed to be only enough to aid capital; the amount per mile is to increase as the work proceeds from both ends towards the centre of the line, where the expense will be greatest. As a further security, these advances are to be a first mortgage lien on the road and equipment;

so the effect is an advance of government credit for thirty years on what would seem to be ample security. We have stated the annual service now required by the government (which could and would be far better performed by a railroad) at five millions of army and navy transports, and one and a half million of postal service, which, together, amounts to six and a half millions. It is proposed to advance, as the work progresses, sixty millions in bonds, which may be increased by accruing interest over service as the work proceeds to seventy millions; the annual interest would then be $3,500,000. The annual service, as above stated, $6,500,000; so the annual service would exceed the annual interest $3,000,000.

This last sum would remain with the government as a sinking fund sufficient to extinguish the bonds in less than twenty-four years, and therefore *before the bonds will become due.*

If it be said the railroad will furnish transportation at much cheaper rates than now paid, still the saving is no less to the government, and the increase in quantity of public transportations will probably more than compensate for the reduction of prices. Besides, the service as the work proceeds will keep down a large portion of the interest named, especially when it is apparent the bonds will not all be advanced till the work is all done.

It remains to be shown whether the sixty millions required from private capital will be well invested.

Take from the estimated gross income per annum, the service, as before stated, $6,500,000, and there remains $23,500,000 as the annual receipts to pay current repairs, expenses, taxes, and dividends.

Engineers have determined the net cost of running a train to be about one dollar a mile. There are many items besides fuel that make up the cost, but that being the principal item, and fuel being scarce on the road, we will put this cost at three dollars a mile. Three through trains a day each way will do all the business here contemplated. The daily cost would then be eighteen dollars a mile per day, and on two thousand miles, the estimated length of the Pacific railroad, $36,000 a day, and for a year $12,960,000 for running three trains from each end each day. Take this from $23,500,000 and there remains $10,540,000 to pay repairs, taxes, supervision, and dividends. For repairs, taxes, and supervision, say, one thousand dollars a mile, $2,000,000, and there remains $8,540,000, which is twelve per cent. per annum on the sum of $70,000,000, to which the sixty millions *may possibly* swell by interest during the completion of the work.

Your committee have thus presented the nature of the work, the probable cost, and a mode by which government aid and private capital may unite in the accomplishment of the Pacific railroad. It may differ from the views of many, and may not be the best mode of accomplishing the object. Your committee have tried to adapt the plan to the nature of our government and the public will. The sum required from government (sixty millions) seems large, but it is only to be advanced in yearly instalments, and then in bonds which are secured by a first mortgage on the road. The Mexican war cost us two hundred millions, and we never felt the payment. The construction of a Pacific railroad will accomplish more good, and add more to our

national glory; and we would therefore be justified by posterity if we *sunk* double the $60,000,000 we have estimated as the cost of the national achievement. The ancient roads of Peru and the "Appian Way" of Rome are monuments of national power worthy of an ancient civilization. A Pacific railroad is consistent with the intercourse and intelligence of our people, in harmony with the progress of the age, and worthy of a great and powerful nation.

It will unite isolated sections of our own country, create a direct communication between Europe and Asia, and revolutionize the commerce and elevate the civilization of the world.

Your committee having thus presented the matter submitted to their consideration, have prepared a bill designed to furnish the requisite legislation to accomplish the object, which they present with a recommendation that it do pass.

SAMUEL R. CURTIS.
F. W. KELLOGG.
R. P. FENTON.
CHAS. L. SCOTT.
ALEX. H. RICE.
SAMUEL S. BLAIR.
E. B. FRENCH.

I concur in the conclusions of the foregoing.

J. F. FARNSWORTH.

I am in favor of a route, in connexion with this, leading to the Columbia river; but as the committee decide against that, I endorse the recommendation of the committee in favor of the central route.

LANSING STOUT.

I concur in the above report except the plan of construction.

H. WINTER DAVIS.

APPENDIX.

In the first volume of the Railroad Surveys you will find a table which was made out with a view of showing comparative routes. Distances and elevations are taken from measurements, and are therefore reliable; but estimates of cost are mainly hypothecated on a supposed resemblance to roads elsewhere. But the starting points relate to the points where the *surveys* commenced, not where the *railroads* would commence. You must therefore add to the southern lines and deduct from the central line, as the committee have explained, before comparisons are made.—(See next page.)

A.—*Table showing the lengths, sums of ascents and descents, equated lengths, cost, &c., of the several routes explored for a railroad from the Mississippi to the Pacific.* (For the grades see the profiles accompanying the report.)

	Distance in straight line.	Distance by proposed railroad route.	Sum of ascents and descents.	Length of level route of equal working expense.	Comparative cost of different routes.	Number of miles of route through arable land.	Sterile region. No. miles of route through lands generally uncultivable, arable soil being found in small areas.	Sterile region. No. of square miles of sums of areas of largest bodies of arable land in uncultivable region.	No. of miles at an elevation above 0, and less than 1,000 feet.	No. of miles at an elevation greater than 1,000 and less than 2,000 feet.	2,000 and 3,000.	3,000 and 4,000.	4,000 and 5,000.	5,000 and 6,000.	6,000 and 7,000.	7,000 and 8,000.	8,000 and 9,000.	9,000 and 10,000.	Summit of the highest pass on the route.	
	Miles.	*Miles.*	*Feet.*	*Miles.*															*Feet.*	
Route near 47th and 49th parallels, from St. Paul to Vancouver.	1,445	1,864	18,100	2,207	*$130,781,000	374	1,490	‖1,000	470	580	720	130	97	28	....	....	...	....	6,044	Tunnel at elevation of 5,219 ft.
Extension thence to Seattle.....	.....	161	1,000	180	*10,090,000	161	.....	.....	161											
Route near the 41st and 42d parallels, via South Pass, from Council Bluffs to Benicia.	1,410	2,032	29,120	2,583	116,095,000	632	1,400	‖1,100	180	170	210	160	580	285	270	107	20	....	8,373	
Route near the 38th and 39th parallels, from Westport to San Francisco, by the Coo-che-to-pa and Tah-ee-chay-pah Passes.†	1,740	2,080	49,986	3,125	Cost so great that the road is impracticable.	620	1,460	‖1,100	340	276	165	348	466	170	60	155	80	20	10,032	Tunnel at elevation of 9,540 ft.
The same, from Westport to San Francisco by the Coo-che-to-pa and Madelin Passes.	1,740	2,290	56,514	3,360	.....do.....	670	1,690	1,100	275	308	190	143	725	284	110	155	80	20	10,032	Tunnel at elevation of 9,540 ft.
Route near the 35th parallel, from Ft. Smith to San Pedro.	1,360	1,892	48,812	2,816	‡169,210,265	416	1,476	2,300	305	347	260	185	160	305	235	95	....	....	7,472	
Branch road to San Francisco, from the Mohave river.	.....	406	7,500	506	19,935,000	322	84	.....	290	10	72	35								
Route near the 32d parallel, from Fulton to San Pedro.	1,400	1,618	32,784	2,239	68,970,000	408	1,210	2,300	485	300	100	170	503	60	....	....	....	....	5,717	
Extension to San Francisco.....	.....	440	10,150	632	25,100,000	376	70	.....	290	50	65	35								

* These are the estimates of the office, those of Gov. Stevens having been brought to the same standard of increased cost as the other routes, and his equipment reduced to that of the other routes. His estimates were $117,121,000 and $7,030,000.

† Supposing the route to be a straight line, with uniform descent from the Un-kuk-oo-ap mountains (near Sevier river) to the entrance of the Tah-ee-chay-pah Pass, the most favorable supposition.

‡ This estimate for the route near the 35th parallel is thought to be largely in excess.

‖ These sums do not include the areas of cultivable soil as far west as the Cascade and Sierra Nevada mountains.

The sum of the minor undulations (not included in the sum of ascents and descents here given) will probably be greater for the route of the 47th parallel than for the other routes; that for the route near the 32d parallel will probably be the least of all.

With the amount of work estimated for the roads in this report, the equated lengths corresponding to the sum of ascents and descents has but little practical value. With a full equipment and heavy freight business, the sum of ascents and descents becomes important. A comparison of the degree of curvature of the routes cannot be made.

The central route from Council Bluffs to Benicia lies between 26 degrees of longitude which at that parallel are about 50.20 miles long. There seems, therefore, to be a clerical error in the "distance in straight line," as shown in this table "A," which would be about 1,310 instead of 1,410 miles. The summit of the highest pass relates properly to Chayenne Pass, but if we go by the South Pass it would be 7,220 instead of 8,373 feet.

In the fifth volume of the Surveys, Captain Humphrey, the able and distinguished officer in charge of the surveys, has materially changed the figures as to cost, &c., on other lines; but no change appears to be made on the central. As these estimates of cost and *equated* distances are made on a mere reconnoissance, and profiles erected on barometrical observations twenty and thirty miles apart, engineers will perceive the convenient change of hypothesis that would change the estimate on the 35th parallel from $169,210,265 to the round sum of $106,000,000.

But other matters in these tables are interesting, and we here present the second edition of this table.—(See vol. VII, Explorations, Appendix, p. 37.)

Table showing the lengths, sums of ascents and descents, equated lengths, cost &c., of the several routes explored for a railroad from the Mississippi to the Pacific.

	Distance by air line.	Distance by proposed railroad route.	Sums of ascents and descents.	Length of level route of equal working expense.	Comparative cost of different routes.	No. of miles of route through arable land.	No. of miles of route through land generally uncultivable, arable soil being found in small areas.	Number of miles at an elevation above the sea between— 0 and 1,000 feet.	1,000 and 2,000 feet.	2,000 and 3,000 feet.	3,000 and 4,000 feet.	4,000 and 5,000 feet.	5,000 and 6,000 feet.	6,000 and 7,000 feet.	7,000 and 8,000 feet.	8,000 and 9,000 feet.	9,000 and 10,000 feet.	Altitude above the sea of the highest point on the route.	
	Miles.	*Miles.*	*Feet.*	*Miles.*														*Feet.*	
Route near forty-first and forty-second parallels, from Council Bluffs, via South Pass, to Benicia	1,410	2,032	29,120	2,583	$116,095,000	632	1,400	220	170	210	160	590	285	270	107	20	....	8,373	
* Route near thirty-eighth and thirty-ninth parallels, from Westport, via Coo-che-to-pa and Tab-ee-chay-pah Passes, to San Francisco	1,740	2,080	49,985	3,026	Impracticable.	620	1,460	340	276	165	348	466	170	60	155	80	20	10,032	Tunnel at elevation of 9,540 feet.
Route near thirty-eighth & thirty-ninth parallels, from Westport, via Coo-che-to-pa and Madelin Passes, to Benicia.	1,740	2,290	56,514	3,360	Impracticable.	670	1,620	275	308	190	143	725	284	110	155	80	20	10,032	Tunnel at elevation of 9,540 feet.
Route near thirty-fifth parallel, from Fort Smith to San Francisco	1,550	2,096	48,521	3,015	106,000,000	646	1,450	585	290	261	236	181	295	222	26	....	....	7,550	
Route near thirty-fifth parallel, from Fort Smith to San Pedro	1,360	1,830	48,863	2,745	92,000,000	420	1,400	354	292	236	210	185	295	222	26	....	....	7,550	Tunnel at elevation of 4,179 feet.
Route near thirty-second parallel, from Fulton to San Francisco, by coast route	1,630	2,024	38,200	2,747	†90,000,000	834	1,190	893	317	120	342	271	50	....	....	...	....	5,717	
Route near thirty-second parallel, from Fulton to San Pedro	1,400	1,598	30,181	2,169	68,000,000	408	1,190	478	337	120	342	271	50	....	....	....	....	5,717	
Route near thirty-second parallel, from Fulton to San Diego	1,360	1,533	33,454	2,167	‡68,000,000	374	1,159	420	305	125	362	271	50	....	....	....	....	5,717	

* Supposing the route to be a straight line, with uniform descent, from the Un-kuk-oo-ap mountains (near Sevier river) to the entrance of the Tah-ee-chay-pah Pass—the most favorable supposition possible.

† The estimate of Lieutenant Parke for the construction of a railroad by this route, from Fulton to San José, is $82,812,750. Adding $2,025,000, the office estimate for the route from San José to San Francisco, Lieutenant Parke's total estimate from Fulton to San Francisco would be $84,837,750.

‡ The estimate of Lieutenant Parke for this route is $59,005,500.

The sum of the minor undulations (not included in the sum of ascents and descents here given) will probably be greater for the routes near the 47th and 49th parallels than for the other routes.

With the amount of work estimated for the roads in this report, the equated lengths, corresponding to the sums of ascents and descents, have but little practical value. With a full equipment and heavy freight business, the sum of ascents and descents becomes important.

Surveys have been continued on the southern lines,and upon these changes were made in this amended table. It is reasonable to suppose further surveys on the central route would have caused similar improvements in the line, and hence the fairness of presenting both these tables.

Another tablè, found in the first volume Explorations, page 32, which has been used to show distances from the points where *surveys* commenced to navigable rivers and to eastern cities. This table does not profess to be perfectly accurate; but, on examination, some use may be made of it in studying the relative length of future lines of railroad. Distances seem to have been taken from railroads then "built, building, and *projected.*" The projected lines had not then all been measured, and looking at the map accompanying this report it will be seen how and where these distances are "projected." The map being made under the supervision of the same officer, Captain Humphrey, illustrates these tables geometrically, and affords to the careful student an opportunity of making corrections where surveys and railroads have been made since the tables were first made in 1855.

"B."

Distances of the eastern termini of the several Pacific railroad routes to the Mississippi river, Boston, New York, Charleston, and New Orleans, by railroads built, building, and projected, as measured on the "railroad maps."

	Miles.
1. St. Paul to Boston	1,316
St. Paul to New York	1,190
St. Paul to Charleston	1,193
St. Paul to New Orleans	1,198
Aggregate	4,897
2. Council Bluffs to Rock Island, (Mississippi river)	267
Council Bluffs to Boston	1,374
Council Bluffs to New York	1,252
Council Bluffs to Charleston	1,195
Council Bluffs to New Orleans	1,075
Aggregate	5,163
3. Westport, mouth of Kansas, (near Fort Leavenworth,) to St. Louis, (Mississippi river)	245
Westport to Boston	1,415
Westport to New York	1,220
Westport to Charleston	1,045
Westport to New Orleans	875
Aggregate	4,800

	Miles.
4. Fort Smith, on the Arkansas, to Memphis, (Mississippi river)	270
Fort Smith to Boston	1,540
Fort Smith to New York	1,345
Fort Smith to Charleston	960
Fort Smith to New Orleans	655
Aggregate	4,770
5. Fulton to Gaines, (Mississippi river)	150
Fulton to Boston	1,530
Fulton to New York	1,335
Fulton to Charleston	950
Fulton to New Orleans	402
Aggregate	4,367

From this table "B" it will be seen that the distance from New York to San Francisco is the shortest by the central route.

	Miles.	Miles.
1. From New York to St. Paul, (see table "B,")	1,190	
From St. Paul to Vancouver, (table "A,")	1,864	
From Vancouver to Benicia, (the bay of San Francisco,) estimated, say	700	
		3,754
2. New York to Council Bluffs, (see table "B,")	1,252	
From Council Bluffs to Benicia, (bay of San Francisco,) (table "A,")	2,032	
		3,284
3. From New York to Fort Smith, (table "B,")	1,345	
From Fort Smith to San Pedro, (table "A,")	1,892	
From San Pedro to San Francisco, (table "A,")	406	
		3,643
4. From New York to Fulton, (this is the Texas route,) (table "B,")	1,335	
From Fulton to San Pedro, ("A,")	1,618	
From San Pedro to San Francisco, (table "A,")	440	
		3,393

It is strange that in the face of these tables the impression should have gone out that the Texas route is the shortest.

Some corrections have been made by subsequent surveys, but the shortening by Simpson's and other surveys on the central route renders it probable that the corrections would be much more favorable to the central route.

In considering the matter of a Pacific railroad *now* we cannot, however, overlook the fact that our railroad system has at some points

advanced several hundred miles further west on the central route, and thus the remainder to be constructed, as shown in the report of the committee, makes the central route to the *centre of the Pacific settlement* about three hundred miles the shortest.

OCEAN ROUTES.

The present routes to California and Oregon, whether by the Isthmus or Cape Horn, are not only thousands of miles round, but they are journeys by water. Land transportation and travel are every day advancing by new inventions, and everybody seems to prefer land even when water lines are of equal length. Railroads along the lake shore and Hudson river are crowded with business. How much more, then, would a route by rail direct to San Francisco compete with present circuitous water routes to the same place.

The Isthmus routes also carry everything through sultry, sickly climates, where property is damaged, and many articles ruined; and where disease has fastened upon thousands, and carried them away to untimely graves.

But everywhere the ocean is a solitude and sepulchre that all should shun who seek security and comfort in their commercial pursuits. Thousands are lost, "buried in the sea," and millions of treasure has been scattered over the fathomless bed of the ocean. The following summary of disasters, compiled and published in a speech of the Hon. Charles L. Scott, on the "steamboat passenger bill," in 1858, is a graphic picture of accidents on water which should serve as an argument in favor of railroad and land travel everywhere:

List of steamers lost within the last five years.

Name of steamer.		When lost.	Value of vessel and cargo.	No. of lives lost.
President, (a)	British		$1,200,000	130
Arctic, (b)	American		1,800,000	300
Pacific, (a)	do		2,000,000	240
San Francisco, (b)	do		400,000	160
Central America, (b)	do		2,500,000	387
Union, (c)	do	July, 1851	300,000	None.
Chesapeake, (c)	do	Oct., 1851	50,000	None.
Sea Gull, (c)	do	Jan , 1851	50,000	None.
Commodore Preble, (c)	do	May, 1851	50,000	None.
General Warren, (c)	do	Jan., 1852	50,000	None.
North America, (c)	do	Feb., 1852	150,000	None.
Pioneer, (c)	do	Aug., 1852	250,000	None.
Independence, (c)	do	do	100,000	140
City of Pittsburg, (d)	do	Oct., 1852	300,000	None.
Tennessee, (e)	do	March, 1853	300,000	None.
J. S. Lewis, (e)	do	April, 1853	150,000	None.
Washington, (e)	do	do	40,000	None.
Southerner, (e)	do		30,000	None.
Yankee Blade, (f)	do	Nov., 1854	280,000	75
Humboldt, (f)	do		1,600,000	None.
Franklin, (f)	do		1,900,000	None.
City of Glasgow, (a)	British		850,000	420
City of Philadelphia, (f)	do	Sept., 1854	600,000	None.
Her Majesty, (a)	do	do	250,000	80
Opolousas, (g)	American		125,000	30
Rhode Island, (a)	do		100,000	60
North Carolina, (g)	do		100,000	15
Winfield Scott, (c)	do		350,000	None.
Tempest, (a)	British		300,000	150
Lyonnais, (g)	French		280,000	160
Albatross, (h)	American		120,000	None.
Cherokee, (i)	do		450,000	None.
Knoxville, (j)	do		150,000	None.
Canadian, (k)	British		400,000	None.
Crescent City, (f)	American		180,000	None.
			17,750,000	2,307

(a) Never heard from.
(b) Foundered.
(c) Wrecked on coast of California.
(d) Burned at Valparaiso.
(e) Lost on the Pacific coast.
(f) Wrecked.
(g) Collision.
(h) Lost near Vera Cruz.
(i) Burned in the harbor.
(j) Burned in the harbor of New York.
(k) Wrecked in the St. Lawrence.

Losses on the lakes.

1854, steam vessels, valued at	$2,187,825	Lives lost	119
1855 do do	1,692,700	Do	118
1856 do do	1,378,100	Do	407
	5,258,625		644

On the western rivers for one year, from 1852 *to* 1853.

78 steamboats, 4 barges, 73 coal boats, 32 salt boats, on board of which 400 lives were lost.

RECAPITULATION.

Value of property.

Lost on steamers on the ocean	$17,750,000
Lost on the lakes	5,258,625
	23,008,625

Number of lives lost.

Lost on the ocean	2,307
Lost on the lakes	644
Lost on western rivers	400
	3,351

Add to this the Austria, a fire at sea and great loss of life, the wreck of the Flying Cloud, and many more recent and fearful accounts of disaster which crowd upon the memory and swell the fearful aggregates of human sacrifice to ocean service.

WESTERN TERMINUS.

The centre of California population is probably north of Sacramento. Hence, for all purposes of securing railroad connexion with the centre of the Pacific population, and also securing convenient commercial connexion with San Francisco, it is sufficient for a central Pacific railroad to run to the navigable waters of the Sacramento. On this subject Lieutenant Abbot, of the Topographical Engineers, says of that river:

"*Navigation of Sacramento river, California.*

"Boats of about four hundred tons burden, (register two hundred tons,) ply regularly from San Francisco to Sacramento, a distance variously estimated from one hundred to one hundred and thirty miles by water.

"Between San Francisco to Lone Tree House boats of about two hundred tons ply regularly. The distance by water is not known to me, but it is about one hundred and twenty-five miles. At Lone Tree House there are some slight rapids.

"From Lone Tree House to Red Bluffs, (the head of steamboat navigation,) boats of about one hundred tons burden are used. The river is here somewhat obstructed by snags and very short bends. The distance is approximately sixty miles by water.

"HENRY L. ABBOT,
"*1st Lieutenant Topographical Engineers.*

"Capt. A. A. HUMPHREY,
"*Corps Topographical Engineers.*"

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 428.

PACIFIC RAILROAD.

APRIL 16, 1860.—Ordered to be printed.

Mr. ALDRICH, from the select committee on the Pacific railroad, submitted the following

MINORITY REPORT.

The undersigned, members of the select committee on the Pacific railroad, would respectfully submit the following considerations in favor of aid to the northern route:

ITS NATIONAL CHARACTER.

The northern route connects the great lakes and the Upper Mississippi with Puget's Sound and the Columbia river. It is required for the defence and development of the northwest, for the transportation of the mails, troops, supplies, and munitions of war. It is demanded to enable the country to control the changing course of the trade of Asia. The direct commerce of our Pacific coast with Asia and the islands of the Pacific is very rapidly increasing. There is already a very considerable movement of population. The vast country watered by the Amoor, as well as the l rge population of China, must, in a few years, furnish a trade rivalling that of the lakes and the Gulf of Mexico at the present time. The northern route not only is the shortest route across the continent connecting great water lines, but its termini are nearer to both Asia and Europe than the termini of any other route. Besides, its gradients are the smallest, its engineering and operating difficulties the least, and the country tributary to it best adapted to settlement. It abounds in all the materials of construction, timber, building stone, and iron for the rail. We will present a summary of its characteristics in these several respects.

DISTANCES.

Overland.

The distances from St. Paul and Lake Superior to Seattle, on Puget's Sound, are respectively 1,764 and 1,750 miles; and from the same points to Vancouver, on the Columbia, 1,747 and 1,733 miles. From St. Louis *via* central route to Benicia, 2,482 miles. From Memphis *via* route of the 35th parallel to San Francisco, 2,366 miles, and from

Gaines *via* the route of the 32d parallel to San Francisco, 2,174 miles; which shows that the overland distance from Seattle or Vancouver to the Mississippi and the great lakes is much less than the distance from San Francisco to the Mississippi, either by the central, the 35th parallel, or the 32d parallel route.

To Asia.

	To Seattle.	To San Francisco.	Difference in favor of Puget's Sound.
From Amoor	3,850	4,110	260
From Shanghai	5,140	5,430	300
From Canton	5,900	6,140	240
From Calcutta	8,730	8,970	240

Which shows Puget's Sound is nearer the above ports of Asia than San Francisco by distances ranging from 240 to 300 miles, and averaging 260 miles.

For sailing vessels the difference of distance is practically greater, for the prevailing winds are such that vessels coming from Asia make the entrance to the Straits de Fuca on their way to San Francisco, and thus the practical distance is some seven hundred miles less to Puget's Sound than San Francisco.

To Europe.

When freights have reached Lake Superior they can be placed on shipboard at once, and be sent without breaking bulk to Europe. Or if they be sent by rail to some Atlantic port, then the railroad distance *via* St. Paul to all the Atlantic ports will be on an average 351 miles less than by the central, and 100 miles less than by the southern route. The distance to Portland *via* rail on the northern route is less than to any port on the Atlantic *via* the central route, or to either Boston, New York, or Philadelphia by the southern route. And Portland is nearer Liverpool, Havre, and Bremen, than New York, by 220 miles, and more southern ports by a greater distance.

These statistics are given to show that in all the characteristics of a route of travel and of commerce, in respect to distances, the northern route has the advantage. Greater proximity to Asia, shortest distance between great water lines, greater proximity to Europe, it is the shortest and most direct route between Asia and Europe.

GRADIENTS.

But this route has the easiest gradients. The sum of ascents and descents from St. Paul to Seattle is 21,787 feet against 29,387 on the central, 48,791 feet on the 35th parallel, and 38,350 feet on the 32d parallel route. These figures give the best practical index of the

effect of the gradients to increase the cost of transportation. Engineers allow one mile for every 52.08 feet of rise or fall as denoting the additional working expense over a level route, which would add to the northern route 412 miles, to the central route 556 miles, to the 35th parallel route 924 miles, and the 32d parallel route 726 miles; and thus making an additional distance in favor of the northern route of 144 miles over the central, 512 miles over the 35th parallel, and 314 miles over the 32d parallel route.

We cannot better illustrate, in connexion with the gradients, the advantage of the northern over the central route, than by comparing the distances to Chicago, the nearest point of connexion of the central route with the great lakes. Taking the equated distances—that is, taking the lengths of level routes of equal working expense for each route, instead of the lineal distances—we find Seattle *via* St. Paul to Chicago 2,586 miles, and Benicia *via* Rock Island to Chicago 3,037 miles. Comparing in the same manner the nearest connexions of each route with the great lakes, we have from St. Paul to Lake Superior 2,162 miles against 3,037 miles, the distance from Benicia to Chicago, a remarkable disparity between the routes in favor of the northern route, when it is considered that at Chicago the water line thence to Europe is as long as from Lake Superior.

THE MISSOURI AND COLUMBIA RIVERS.

The northern route might be called the route of the Missouri and Columbia rivers. It touches the Missouri at the mouth of the Yellowstone, and near the Great Falls; the Columbia at steamboat navigation. Steamers have actually ascended the Missouri to Fort Benton, a short distance below the Great Falls, and the Columbia and Snake rivers to Priests' Rapids and the mouth of the Pelouse. These rivers are now used by the War Department as lines of transportation for troops and supplies. Troops will next month be sent in steamers to Fort Benton, and thence be despatched overland to the department of Oregon. The distance from Fort Benton to the mouth of the Pelouse is about 485 miles, and to Priests' Rapids about 560 miles. No other route presents this extraordinary engineering facility for the construction of an overland railroad; for it can be worked simultaneously in four different divisions, the extremity of each division resting on water lines, and thus the road can move on simultaneously on eight different sections; the longest division being the one from Fort Benton to the Columbia, and the longest distance the road will have to be constructed from a single point accessible by water being less than 300 miles. On every other route the distance between water lines will be from 1,500 to 2,000 miles.

CHARACTER OF THE COUNTRY.

The official report of Governor Stevens states that all but 320 miles of the route passes through an arable country, and that these 320 miles are either a grazing country or are occupied by the higher portions of the mountain ranges, which are generally wooded. This is

confirmed in general terms by the reports of Lewis and Clarke, the statements of the Jesuit missionaries, and especially by the geological reconnoissance of Dr. Evans. There seems to be no difference of judgment between Governor Stevens and the officers generally of his exploration. Moreover, so far as settlements have extended, and they have spread over a large portion of the interior of Oregon and Washington, they have fully confirmed this judgment. The formation generally of the country is limestone, and the deposition of moisture is unquestionably sufficient for all the purposes of tillage. There is a remarkable absence of sage and sand on the route. It occurs only in comparatively small patches. The worst portion of the country on the route lies mostly north of the located railroad line between Snake river and the Spokane, and between the Columbia and the meridian passing through the mouth of the Pelouse. Yet in this tract, occupying simply 50 miles of the route, there is generally good though not abundant grazing, and many spots of good arable land.

WOOD, WATER, AND MATERIALS FOR CONSTRUCTION.

In regard to wood, water, and materials for construction, the route generally is remarkable for its facilities. No deficiency need be apprehended of water on any portion of the route. Some aqueduct arrangements on a small scale may be required in passing south of the Miniwakan lake. As to wood, the longest interval is about one hundred miles, crossing the great plain of the Columbia, where ties, &c., must be procured either from the extremities of the route, or from a considerable distance off the route. The Columbia and Missouri, with their tributaries, again come to the aid of the work. On the upper waters of both rivers the reservoirs of timbers are very large, and the rivers admit of easy rafting. The tributaries of both furnish supplies. Assuming as wooded any portion of the route which passes along a stream which, by rafting, can supply wood, and also as wooded any portion of the route where a growth of cotton-wood, &c., will furnish temporary arrangements until the road is in operation and a more durable material can be furnished by the road itself, there is wood along the entire route for all the purposes of the structure, except for the hundred miles above referred to in Washington Territory, for about fifty miles in crossing the Conteau du Missouri, and about one hundred miles south of the Miniwakan lake. The forest growth of the Cascades, Bitter Root, and Rocky mountains consists of fir, spruce, larch, pine, cedar, &c., which attain, except on some portion of the eastern slope of the Rocky mountains, a large size and are inexhaustible in quantity. Excellent pine and fir flank the road east of the Rocky mountains, at the Three Buttes, Bear's Pass, the Girdle mountains, and is brought down from the Upper Missouri. A cotton-wood of large growth is found on Milk river, which will answer temporarily until a better material can be brought by rail from the nearest point where the road touches the Missouri. Through the State of Minnesota the supply of timber is inexhaustible.

As to building stone, sand, clay for bricks, there are ample supplies at convenient points. Moreover, near the line of the road west of the

Rocky mountains, there are inexhaustible supplies of the most valuable ores of iron. These ores have been carefully analyzed. They are to be found in the Spokane country, on the tributaries flowing into Snake river, and in the Cascade mountains.

CLIMATE.

The undersigned are satisfied that the objections which have been urged against this route on account of the severity of the climate and the depth of the snow are utterly untenable. Railroads are now in successful operation where the difficulties in both these respects are at least equal to those that will be encountered on this route. Indeed, the climate is much more severe on the Russian and Canada roads. The snow is absolutely less on the northern than on the central route. It is notorious that it is small through the prairie region from Minnesota to the base of the Rocky mountains; and the explorations have furnished significant and reliable information, removing entirely all doubt as to its being a serious difficulty in crossing either of the mountain ranges. In the Flathead country, and on the great plain of the Columbia, there is less snow than in the prairie region east of the Rocky mountains. Indeed, throughout the entire extent of the route, cattle and stock keep in good condition in winter without fodder. The quantity of stock in the interior of Washington and Oregon and east of the mountains, which thrive and live solely upon the winter grass, is very large. During the past winter the stock of Lieutenant Mullan, in charge of the Fort Benton and Walla Walla wagon-road, has been subsisted on the grass of the Bitter Root valley, and at the last accounts, the middle of January, was doing well. It is not necessary to elaborate this question of climate, as the information given in the reports of the explorers is very full and convincing.

ENGINEERING DIFFICULTIES.

We have adverted to the extraordinary engineering facilities afforded by the river system of this route. The only engineering difficulty of mark on this route are the tunnels which lie on the line of the shortest practicable route. These tunnels may be mainly avoided by deflections from the shortest line, which would considerably increase the distance. It may be remarked, however, that tunnels, both in Europe and the United States, are in process of construction which exceed the length of the longest tunnel lying on any one of the reported practicable lines of the northern route. If, on the final surveys of location, it be determined to encounter the tunnels rather than increase the distance and cost of deflection, it would not delay the completion of a through road, as zigzags may be used temporarily. Great improvements have been made, and are being made, in all the appliances, particularly in machinery for tunnelling, and we do not apprehend that any serious difficulty will arise from this cause. We have, indeed, the opinion of the most eminent engineers of both Europe and the United States having experience in tunnelling, to the effect that tunnels like those on the northern route are perfectly practicable, and not

to be considered, excepting as operations involving a certain cost and requiring a certain time to be accomplished.

The other difficulties are simply the usual difficulties in a well watered and mountainous country: large quantities of bridging and culvert work, heavy excavations in rock and earth, and, as regards the Lower Columbia, special provision against freshets. In consideration of the eight independent operations into which the work of constructing the road upon this route can be resolved, as a piece of engineering, it is really simply the work of building less than three hundred miles of road, and it may be asserted without fear of contradiction that we have built more difficult and more costly roads already in the United States, as several of the roads over the Alleganies.

COST.

Indeed we may dismiss the engineering difficulties altogether; cease to annoy ourselves about either the tunnels or the excavations in rock and earth, or the bridges and culverts, and come at once to the cost of the road. We are satisfied that if the necessary means are raised all the difficulties will disappear before the engineer, as they have invariably disappeared in our whole railroad experience where labor and skill have been applied.

The cost of the northern route from the western boundary of Minnesota, with two branches, one to Seattle on Puget's Sound, and the other down the Columbia river to Vancouver or Portland, in round numbers, is one hundred and twelve millions of dollars, or in detail,

	Miles.	Cost.
West boundary of Minnesota to Seattle	1,543.6	$95,000,000
Columbia river branch	223	17,000,000
Total	1,766.6	$112,000,000

It is believed that this estimate will be considerably reduced in the careful location of the road, for great care seems to have been taken in not only allowing very liberal sums for contingencies of all kinds, but in the cost per mile for every section. Thus, $40,000 per mile is the estimate of the cost for 742 miles of the route, passing over the prairie region lying between Minnesota and the head waters of Milk river. The undersigned do not doubt that much of this distance can be built for $25,000 per mile, including a full equipment.

DEFENCE.

The movement of troops the present season up the Missouri is significant of the military importance of the northern route—a consideration greatly strengthened by its neighborhood to a foreign power, now bent on the development of its possessions north of the boundary. The main reliance for troops in time of war is the militia of the country, and a policy which shall tend to throw population on our frontier and to develop all its varied resources, will tend infinitely to strengthen this right arm of our national defence. Moreover, it is not probable

that any effort will be made to establish a continental communication by rail through British America, at least for many years, if the United States, in adopting a railroad system, shall provide for the northern route. A glance at the map will show the large population, and the great resources tributary to it: on the Pacific, Oregon, Washington, Vancouver's Island, and British Columbia; and east of the Rocky mountains, the whole St. Lawrence basin, and the basins of the Upper Mississippi, Upper Missouri, and the Red River of the North. More than one-half the railroad capital of the continent is directly concerned in the recognition of this route; and, considering the distances given in the first part of this report, the whole country east of the Mississippi must look to the northern route as the route of the commerce of Asia. If the northern route be on American rather than on British soil, its effect on the commerce of the Pacific can hardly be exaggerated, and we hazard nothing in predicting that the freight business will be so large on the completion of the road that the necessity will at once be established of laying a double track. Thus this road is the condition indispensable to American ascendency on the northwest coast, and in the commerce of the Pacific. Its effect to strengthen the defence of the country, both on the sea and on the land, must impress every mind. The policy of the country is not to lay up immense quantities of decaying material in peace for the purposes of war—large hulks of ships which will be obsolete in model and rotten from stem to stern—or to keep in service a great force of officers and men in any of its arms, to be in the condition of lethargy and effeteness on the breaking out of war; but to keep in the best possible condition the material and force required for active service in the contingencies of year to year; to keep in advance, through the inventive genius of our people and the great administrative capacities of our government, of the improvements of all other nations, and to devote the uncrippled energies of our people to the development of the resources of our country—subduing its wilderness, establishing its communications, extending its commerce, quieting and subordinating all its disturbing elements, protecting all branches of industry in their legitimate pursuits, and thus creating vast resources and facilities, and impressing upon our institutions an iron and irresistible energy, which in war will cause armed men and vessels of war and supplies to spring up at command, and the whole to be applied in the spirit and success which have crowned the accomplishment of the conquests of peace. This is the wise policy of the country, and in this view we must keep a vigilant eye on the commerce of the Pacific. Puget's Sound is marked out by nature for a great commercial entrepot. The northern route will give it to the United States, with all its grand elements of naval strength. An abandonment of the northern route will give it to Great Britain, which already has a rapidly increasing commerce and a large naval station in those waters.

CONNEXIONS.

We have referred to the fact that the adoption of the northern route by Congress will defer almost indefinitely a continental road through

the possessions of the British crown. This view is confirmed by the consideration that a route through British territory would be longer and more difficult than the route of the 47th parallel, and that easy and short connexions can be established between this route from the great plain of the Columbia and the mining regions on Frazer's and Thompson's rivers. Such connexions cannot bring about an antagonism and rivalry in the trade of Asia, for freight will invariably follow the cheapest lines, other considerations being equal. But. these connexions. local in character, will be of great consequence in accommodating British Columbia, and as feeders to the main line.

Moreover, the Columbia river branch of the northern route lends itself to a connexion with San Francisco by the Willamette and Sacramento valleys; and such connexion will give San Francisco an undisturbed interior communication with Oregon and Washington, (of great consequence in time of war,) and also her shortest possible connexion with the great lakes. Considering the rapid increase of population in the northwest, and that on the completion of the overland railroad there will be in Minnesota, Wisconsin, Northern Iowa, Dakota, and the British possessions to the northward, a population of at least five millions of souls lying nearer to San Francisco by the northern route and this proposed connexion than by any other route, it is an element of business and communication not to be overlooked or surrendered.

There is, however, at present an excellent coast communication by steam between San Francisco, the Columbia river, and Puget's Sound; and for this reason we do not recommend government aid to establish the connexion.

MINERAL WEALTH.

We have thus far simply adverted to the inexhaustible quantities of good iron ore on the route. There is, however, a large gold-bearing country east of the Cascade mountains on the line, and sulphur, lead, platinum, quicksilver, silver, and copper north of the route. The established gold-bearing character and the remunerating mines of British Columbia, taken in connexion with the similarity of the geological formation in Washington Territory, and the rich deposits of gold now being worked, leaves scarcely room to doubt that a large mining population will be found in the vicinity of the route before the road could even be located, which circumstance would, in its turn, rapidly develop the agricultural and grazing capacities of the country, and draw over the northern route a large emigration.

Moreover there is good coal in inexhaustible quantities on Puget's Sound, and traces of good coal have been found in the interior, near the line of the route.

TRADE WITH ASIA.

We have already shown that the northern route furnishes much the shortest line from Asia to our interior, our Atlantic ports and to Europe.

The trade of Asia is a trade with over six hundred millions of people, covering an area of over twelve millions of square miles. The foreign trade of China was estimated, some years since, at one hundred and twenty-five millions of dollars. Japan, with its fifty millions of people, is six thousand one hundred and sixty miles nearer England *via* the northern route than by Cape Horn, and Shanghai, the great future emporium of China, three thousand six hundred miles nearer. The shortest time will determine both the course of travel and the line of movement of all costly articles of freight. The value of time in the transportation of freight is evinced by the high rates paid to clipper ships, the rapid increase of business on the steamers between New York and San Francisco, where the rates are excessively high, the movement of cotton up the Mississippi, and by rail, to New England ports, and the higher rates paid for transportation by rail on lines parallel to canals and rivers. But all articles which deteriorate by exposure to a tropical climate will take the northern route across the continent. Teas, spices, furniture, silks, furs, &c., will, on this route, find their way to Europe.

A short route to China is of the utmost importance to this country, to facilitate the exportation of goods manufactured from the great American staple. Great Britain has penetrated Asia, and commanded its valuable trade almost wholly by her exports of cotton goods. Hitherto we have had no advantage of distance in our competition for this trade. Her advantages for manufacturing are fast diminishing. The prices of labor in that country are increasing. Our own manufactures of coarse cottons have attained such skill and economy that they command our own markets, and are only restrained in the productions of their enterprise by a want of outlets for their fabrics. With the proposed northern road, we shall best avail ourselves of our geographical position to control the markets of Asia with our cottons. It has been estimated that the supply necessary for these new markets will require an amount of cotton equal to the present entire crop of upland cotton in the United States.

Estimating the trade which will spring up with Asia at only fifty cents per soul per annum, (and our trade with Cuba exceeds twenty dollars per soul,) it will give us a trade exceeding three hundred millions a year. Including, however, the overland transportation to Europe, we do not doubt it will exceed six hundred millions per annum.

The undersigned have thus given a brief summary of the characteristics of the northern route, and have presented, what seems to them, its truly national character. They recommend to the consideration of the House the accompanying bill.

CYRUS ALDRICH.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 428.

PACIFIC RAILROAD.

MAY 9, 1860.—Ordered to be printed.

Mr. HAMILTON, from the Select Committee on the Pacific Railroad, submitted the following

MINORITY REPORT.

The undersigned, a minority of the special committee to whom was referred the subject of the Pacific Railroad and the various memorials relating thereto, submit the following views as embodying some of their conclusions in reference to the subject, and report:

Every proposition to engage the government of the United States in the business of constructing a railroad between the States in the valley of the Mississippi and those on the Pacific slope is met by constitutional objections to the power of Congress to legislate for the purpose. But it is conceded by all that Congress may use the inventions of science and art in selecting the best instruments with which to conduct successfully the public administration, within the sphere constitutionally limiting congressional power. So that, though it should be admitted that Congress cannot build a railroad to the Pacific, it may contract (with those who can) for the transportation of mails, supplies, munitions of war, soldiers, sailors, and public agents over such a road whenever the same shall be in readiness to convey freight and passengers.

Whether the government will pay for such service in advance of its performance does not present a question of constitutional power, but merely a question of policy, to be considered with reference to economy, security, and reimbursement.

If the service proposed should be essential to, or proper in, the execution of powers plainly confided to Congress, then Congress may contract for it on such terms as may be agreed between the contracting parties. Congress is not confined to a given formula in making a contract, and may make payment in advance or after performance by the other party, as Congress may estimate the one or other mode to be preferable, or to be justified by the objects to be secured by the contract. The history of the government abounds with examples of the undisputed exercise of this discretion, even where the object was merely scientific acquisition; much more then would it be justified where an equivalent is stipulated which, undoubtedly, will tend to

assure the common defence, promote the general welfare, and add ameliorations to commerce, all of which are ends within the care of Congress, under the strictest interpretation of the Constitution. Waiving a discussion of the question of constitutional power, as not necessarily arising under the view which we have taken of the action proper to the subject and the occasion, the undersigned suggest that they entertain no doubt that the public interest imperiously demands the adoption of some mode by which the extreme parts of this confederacy may communicate with each other more rapidly than they can at present; that the best mode is to establish railroads from the States in the Mississippi valley to the shores of the Pacific, and that it is the duty of Congress to lend every facility to the prosecution of such works wherever that can be done without overstepping the limits assigned to congressional power by the Constitution. But the undersigned do not concur with the majority of this committee, either as to the location of the road to which a preference should be given, if Congress will favor one road only, nor as to the extent of accomodation which Congress should afford.

The majority of the committee recommend only one trunk line, proceeding from the junction of two branches that are to spring from initial points on the western borders of Iowa and Missouri, and to unite within two hundred miles west of the Missouri river. The undersigned recommend that this line shall be established, to run from initial points on the borders of Iowa and Missouri, north of 38°, and to unite at some point within three hundred miles of the Missouri river, and thence to run by the best practicable route to the waters of the Sacramento and to San Francisco bay; also that the action of Congress shall embrace a contract with the Southern Pacific Railroad Company, of which J. Edgar Thompson is now the president, for the transportation of the mails, &c., over the line of railroad which said company is now constructing, starting from an initial point near the western borders of Louisiana and Arkansas, and thence, running by El Paso and Fort Yuma, to the Pacific shore at San Francisco, to embrace a branch, also, from Fort Smith, in the State of Arkansas, and uniting with the main stem west of longitude 97°.

The undersigned will now proceed to submit the considerations upon which they have arrived at their judgment in the case.

The line through Texas to the Pacific is known to be practical. It was surveyed in the years 1844–'45, by an engineer corps under charge of Mr. A. B. Gray. Its practicability was then solved, and the construction of the road has been commenced by the company referred to, under a charter granted by the legislature of the State of Texas.

The observations of Mr. Gray have been since verified by the reconnoissances of several officers of the United States of recognized and acknowledged abilities. Referring to the first five hundred miles of the proposed road, Mr. Gray says of the country through which it will pass:

"I can say that I know of no country more peculiarly adapted in every way to the construction and maintenance of a railroad. The mild and spring-like atmosphere; a perpetually healthful and pure climate, suitable to the growth of the most valuable staples; its num-

berless rivulets and fine alluvial bottoms; fruitful valleys and rich uplands interspersed with prairie and timber; a far greater proportion of cultivable land; inexhaustible beds of excellent coal and other mineral deposits, render it, in varied and valuable resources, unequalled for such a length of line as this railway will embrace."

Major Merrill, of the United States army, says of the same country, in a letter to the Hon. Anson Jones:

"Nearly all the country along this route is susceptible of a dense population, is composed generally of rich lands, well watered, easily cultivated, having an abundance of stone, with a due proportion of timber. That the line of 32° is by far the cheapest and most practicable route for the Atlantic and Pacific Railroad is, in my own mind, settled beyond a doubt. Possessing an easy grade, with ample stone, timber, and water; passing through a rich and beautiful country, with a climate unsurpassed, if equalled, by any in the world, it cannot fail to attract the attention of all, and become the favorite route of the country."

When the face of the country changes from one of extreme fertility as a planting country, it becomes a fine range for pasturage. In the mountain ranges it abounds with minerals. The exports of *copper* from the mountain ranges nearest to Bexar, we are credibly informed, are *now* only limited by the means of transportation. Coal, salt, gypsum, argentiferous ore, are all found in great abundance, and invite the investment of capital.

From the eastern border of Texas to Fort Chadbourne (407 miles) the line of road will be laid on a gentle ascent, the *maximum* grade being 37 feet to a mile. From Chadbourne to Mustang Pond (100 miles) the average rise will be from 8 to 17 feet to the mile; thence to the Pecos river (115 miles) the average rise of 15 feet 5 inches and fall of 13 feet 4 inches to the mile; thence to the summit of the Guadalupe Pass, an average rise of 31 feet 2 inches to the mile for 35 miles. From this point the grades are 45 feet to the mile for the next 27 miles; then for seven miles a maximum gradient of 91 feet per mile, which is the maximum grade occurring between the eastern border of Texas and El Paso. The grades, ascending or descending, through the intervening distance only exceed 40 feet to the mile through a distance of four miles, when the average descending grade is 75 feet to the mile. The distance from the initial point to El Paso is 783 miles.

Such is the country and such the sketch of this line to the crossing of the Rio Grande, and we have stated this somewhat in detail to prove the practicability of the route and to exhibit the character of country whose resources the road will be calculated to develop. From El Paso to Fort Yuma (500 miles) the direction of the road is west, between the 31st and 32d parallels, and at grades which seldom exceed thirty feet to the mile, the maximum grade at Dome Pass, for five miles, being 63 feet to the mile.—(See Appendix for Report of A G. Campbell on N. H. Hutton's observations on the route from El Paso to Fort Yuma.)

The practicability of this route, indeed of other routes, from Fort Yuma to San Francisco has been established by several close recon-

noissances.—(See Lieutenant Parke's Exploration, Ex. Doc., vol 2, part 7, page 4 and following pages, for an able report on this part of the line. See, also, letter of A. G. Campbell, Superintendent of Pacific Wagon Road, in Appendix, (D,) for another route, in the line between Yuma and San Francisco.)

Major Emory, in his Memoir on the Boundary Survey, vol. 1, page 14, says of this route, "It is the most practicable, if it is not the only feasible route by which a railway can be carried across the Sierra Madre and its equivalent ranges to the south."

Secretary Davis, at page 29, volume 2, part 1, Executive Documents for 1855, says "the route of the 32d parallel is, of those surveyed, the most practical and economical route for a railroad from the Mississippi river to the Pacific ocean. This is the shortest route, and not only is its estimated cost less by a third than that of any other of the lines, but the character of the work required is such that it could be executed in a vastly shorter period." This line passes through a salubrious climate, and avoids the snows, which will form a very serious impediment to successful operations on the more northern routes.

We will not extend this paper by details as to climate, water, fuel, stone, timber, and other elements which enter into a solution of the question of construction, nor shall we offer any further comments as to the gradients on this line. Suffice it that, beyond any doubt, all the elements for success are present, and there can be no rational dispute as to the feasibility of constructing the railway along the line herein indicated.

A comparison of the routes by the 32d and 41st parallels will most clearly demonstrate the superiority of the former. By reference to the accompanying letter of Captain Humphreys, the accomplished and intelligent officer whose attention has for several years been occupied by the Department of War in embodying the reliable results of the railroad explorations, it will be seen that in point of *distance* the southern Pacific railway line has an immense advantage over all the other lines that have been discussed.—(See Appendix A.) This advantage will be still more apparent from an examination of the table, taken from the Pacific railroad reports, and furnished with the majority report of this committee.—(See Appendix B.) Such examination, on a comparison of the routes by the 32d and 41st parallels, results as follows:

Estimated cost of route on 41st parallel - -	$116,095,000
Estimated cost of route on 32d parallel - - -	90,000,000
Difference in favor of southern route - - -	26,095,000

Arable lands on route of 41° - - - - - -	632 miles.
Arable lands on route of 32° - - - - - -	834 "
In favor of southern route - - - - - -	202 "

Uncultivable lands on route by 41° - - -	1,400	miles.
Uncultivable lands on route by 32° - - -	1,190	"
Difference in favor of southern route - - -	210	"

Elevations.

0 to 1,000 feet.—In favor of southern route over the route on 41° - - - -	673	miles.
1,000 to 2,000 feet.—In favor of southern route over the route on 41° - - - -	147	"
4,000 to 5,000 feet.—Greatest in northern route - -	319	"
5,000 to 6,000 feet.—Greatest in northern route - -	235	"
6,000 to 7,000 feet.—Greatest in northern route - -	270	"
The highest elevation on the southern route is - -	5,717	feet.
The highest elevation on the northern (41°) route is -	8,373	"
Difference in favor of southern route - - -	2,656	"

The minimum of cost, and cutting, more miles of low elevations and fewer miles of great elevations; more cultivable lands and fewer uncultivable lands; milder and more genial climate, and shorter distance, constitute some of the superior advantages of the southern route over the only route recommended by the majority of the committee.

But there are other advantages belonging to the route on the 32d parallel which must not be omitted in this connexion. For commerce with Australia, the Sandwich Islands, all Oceanica, and the entire west coast of Mexico, Central and South America, the route on parallel 32° so far outstrips its competitor on the parallel 41° that there is, in fact, no comparison between them.

When the rail shall be in working order to El Paso—the crossing of the Rio Grande—a most valuable commerce will be opened to the United States, which at present is but partially enjoyed by them. The topography of the country indicates the vicinity of El Paso as the local business point for Sonora, Sinaloa, Chihuahua, Durango, and Zacatecas, at least, and it will have superior advantages to command the trade of all that part of Mexico north and west of the city of Mexico which does not properly seek a western seaport on the Mexican coast. This will appear from the fact that the direction of the mountain ranges and valleys of Mexico, as indicated by the streams, put up to El Paso as to a common centre. A glance at the map will prove this. The table of distances from point to point will also prove that El Paso is the most convenient point from which to command the trade with the richest mineral districts of Mexico. From El Paso to Durango is about four hundred miles; from the city of Durango to the city of Mexico is five hundred and twenty-eight miles. With El Paso opened as a point of depot and distribution there can be no

question that the trade, at least so far as Durango, will at once turn to El Paso, and that commerce which now falls almost exclusively into British hands will, thenceforward, stimulate American enterprise and reward American industry. The amount of this trade may to some extent be estimated from a knowledge that the area covered by the five States referred to is 273,832 squares miles, or more than one-third of the entire area of the Mexican republic, (which is 766,482 square miles,) and that at present this area contains *less than four inhabitants to the square mile of territory, though it is known to be the richest mineral district of the whole republic.* Our consul, writing from Chihuahua in 1858, says:

"In minerals this State exceeds any other in the republic. There is coined in the mint in this city $1,000,000 annually in silver. Of the silver taken from the mines not one-third comes here for coinage." * * * "It is for its mines that the State of Chihuahua is destined to be most distinguished. Sufficient progress has been made in the working of these, principally silver, to prove that they are of surpassing richness." Another writer says:

"This branch of industry, as well as all others throughout this region, has been brought to the verge of ruin by hordes of wild Indians, of whom the Apaches are the principal, who, for many years, have followed their thieving destructive calling, almost without let or hindrance. The State is, in fact, partially abandoned by reason of this great scourge."

The same author says: "Chihuahua has remarkable facilities for the raising of stock. Her hills, plains, and valleys, afford sustenance for cattle, horses, mules, and sheep, throughout the year, and in no section of the habitable part is the climate such as to require shelter for stock, which has always been one of the principal sources of wealth in the State." Chihuahua produces corn, wheat, barley, cotton, sugar-cane, grapes, figs, oranges, lemons, pears, peaches, fruits, and vegetables, of all kinds nearly, thus indicating at once the agricultural capacity of the State and the variation of climate afforded by the altitudes of her hills and the warmth of her vales. Can it be doubted that such a country, opened to a convenient depot at El Paso, and railroad communication with the Atlantic and Pacific coasts of the United States, would very soon exchange the roving Apache for the industrious husbandman and the hardy miner, so that the land would commence to bring forth its rich treasures to reward industry in every department?

The six western States of Mexico are more thickly settled. On 196,000 square miles, they display more than two and a half millions of people. Access to them will be more convenient by this road than by any other means whatever. So the transit from the workshops and manufactories of this country by a railway skirting the northern rim of Mexico will transfer the commerce of that country to the United States, simply because that transit will be excluded to foreign competition, and will be quicker and cheaper than a transit across the mountains from ports on the Gulf of Mexico.

Señor Lerdo de Tejada, the most eminent statistician in Mexico, *estimates* the importations of Mexico for 1856 as follows:

From Great Britain	$12,500,000
From France	4,500,000
From the United States	4,500,000
From Germany	1,860,000
From all other countries	2,640,000
Total	26,000,000

Against this the exports are set down at $28,000,000, making a legalized exchange of productions of $54,000,000 per year, of which the relation of that borne by the United States to that enjoyed by Great Britain is estimated as $8,000,000 to $33,000,000. The British returns to Parliament show her *importations to Mexico*, from 1840 to 1846, both inclusive, to have been of the value of $82,246,785, or about $12,000,000 per annum. Of the articles so imported, cotton fabrics amounted to $57,000,000, and linens to $12,000,000, while the other $13,000,000 was distributed in various manufactures, as carriages, cutlery, hats, iron and steel in bars, harness and saddles, glassware, &c. This exhibit should satisfy every American statesman how deep are the interests of his country involved in the rapid prosecution of a railway to divert this trade to the United States, and to develop it to an extent hitherto unknown. The exports of Mexico consist principally of gold and silver. There is no reason why these should not seek the markets of the United States instead of being shipped across the sea, were it only for economy in insurance. No other mode of making such an acquisition to existing commerce can be adopted than to secure the rapid construction of the Southern Pacific Railway along the parallel of 32°, touching first at El Paso, and thence skirting Arizona, as far as Fort Yuma, before it turns northward to San Francisco. The development of the coffee trade with western Mexico alone is an object of the greatest importance, and will secure the noblest results. The necessary limits of this report will only permit the suggestion of a few points for consideration, rather than a detailed exhibit of the present condition or future prospects of that trade with Mexico.

It is entirely apparent that this commerce can receive no more impulse from the establishment of a railway bearing away to the South Pass than it would from one established to the British port on Vancouver's Island. The country will never be touched or approached by that route with which the commerce is to be cultivated to which we have referred; that route will no more meet the wants of the southwest for development than the southern railroad would answer to develope the latent energies and wealth of Utah, Nevada, and Jefferson. Both roads are wanted, and both can be built, not only without the loss of a cent to government, but with an accretion to the strength and wealth of the nation, that will vastly augment the ties which bind the sections of this country together. Under this idea of national development, we beg to make reference to a letter of Lieutenant Maury, of the navy, which will be found appended to this report. (See Appendix C.) It will be perceived that the outgoing trade to

China and Japan, though debarked at Puget's Sound, must run south for the eastern trade winds quite to the point at which the *southern* railway would first touch the Pacific shores. It may not be amiss, in this connexion, also to remark that vessels would be as profitably engaged in conveying *raw cotton to China and Japan from that point* as in any other branch of navigation; for China alone imports more than 500,000 bales of raw cotton annually from British India, bringing it quite four thousand miles by sea, around the point at Singapore. Could the American ship take this article directly from a Pacific port, with favoring breezes to the shores of China, the difference of distance in the water transportation would be a drawback of inconsiderable magnitude, while the return voyage would bring to our shores the rich products of the east to swell the national revenue and the profits of our mercantile interest. Arizona and southern California can both profitably raise cotton for the Chinese market.

The statesman does not require to be reminded of the vast revolution in the commerce of the world that must be effected by the completion of lines of railroads, which will bring freights on the Pacific within ten days of the Atlantic shores of the United States. The voyage from New York to San Francisco, around Cape Horn, now consumes one hundred and thirty days; thence to China, thirty days; and thence home, via the Cape of Good Hope, one hundred and ten days. With rail communication across the continent, you may leave New York, visit China, and return to New York within ninety days, making three round trips where one only can be now made. Little reflection is necessary to draw the conclusion that the valuable commerce of the East with Europe and America will seek the path of most rapid and secure interchange, and that with the improvements the United States must directly command that great trade which formerly sustained the opulence of the Ptolemies, and now enriches the enterprise of England.

But the minority of the committee have not differed with their colleagues as to the benefits to flow from railway communication across the continent—their difference has been, 1st, on the location of one road, if there shall be but one; 2d, on the propriety of selecting only one—the minority being clearly convinced that one road will not meet the conditions required by the country either as to military defence, postal arrangement, transportation of provisions and munitions for army and naval use, development of the commercial, agricultural, and mining powers of the great interior, of the connexion of this country with the population of neighboring governments. To trace the lines of the proposed roads across the continent demonstrates the correctness of our position. From New York to the Pacific ocean the very shortest line is to San Diego. The construction of a line up the Platte or the Kansas bears so far away from the line, that the country to be benefitted by the improvement on the latter derives no benefit whatever from the former. A railway up the streams which traverse Kansas and Nebraska will never impart stimulus to southern industry, or assist in developing the resources of the vast southwest. What would a railway up the Platte or the Kansas effect to improve that beautiful region from the Red river to the Pecos, which has capacity to produce annually more

cotton than the entire present crop of the United States? That road will serve to strengthen the tide of population which now begins to pour its waves over the barriers of the Rocky mountains, but it cannot serve to invite to happy homes the millions who may be accommodated in the sunny valleys of the southern region we have described. Shall these remain remote from the path of our advancing civilization, useless to the present, possibly to future generations? Shall we turn away from the silver mines and copper-bearing mountains of the south, until those of a more northern latitude shall have been exhausted? Shall the Indian of the northwest be compelled to retire from the lands desired for occupancy, and the more unruly savage of the south be permitted to desolate the southern frontier with impunity, and to beat back the adventurous pioneer who seeks the distant plains of that fertile region for a new home? The minority of the committee respectfully submit that there are considerations of justice which persuade the statesman to open at the same time both these outlets for the population of this country, and to do so by equal favor extended to each. Though these arguments may be said to attach rather to a proposition to construct the roads than to a proposition to contract for transportation over them when constructed, still it is not to be disguised that Congress is now approached with the view of inducing that body to lend such facilities as may be legitimate to assure the ultimate success of the enterprise which they have undertaken who will engage in the building of the Pacific railways. The considerations which have been submitted deserve the serious thought of statesmen who would exert their legitimate powers with the view of producing the maximum good, even though it must flow collaterally rather than directly from their action. We are persuaded that Congress desires to encourage, in every way it can, the production of such beneficent and grand results as must flow from the completion of our main continental thoroughfares, and that Congress cannot be blind to the fact that the progress of these roads will constantly tend to lighten the public burdens, at the same time that they give material and important aid, both to a well devised system of frontier defence and to the nation's development. We do not imagine that it can be seriously contended, in a military point of view, that the route favored by the majority of the committee is so important as the route along the southern frontier. The route along the parallel of 41° can be of military importance to the interior only so long as the Mormons may repeat the scenes of last year, when their alleged insurrectionary spirit demanded an outlay of money to prepare to quell it, which would nearly have put a railroad communication with their part of the country into working order. That necessity may arise again, and that extravagance of expenditure is best to be avoided by the timely preparation of means of rapid and secure transportation. The government cannot fail to remember the perils to which a gallant little army was exposed, which was hutted for a whole winter in the mountain region of an inhospitable climate, and which could not arrive in time on the theatre of expected hostilities to perform any satisfactory service. Then the Congress would have congratulated itself had the rail and the telegraph been at the command of the Executive. A similar con-

tingency may easily arise to vindicate at a future day the policy we now advocate. We are not unmindful of the decided influence such a road, bearing westward from the Missouri, will have in diminishing the present enormous expenditures for postal and military transportation, yet we think it cannot equal, or, at any rate, surpass the ameliorations in the same particulars which the road on the parallel of 32° would afford, while in other points of view it is not nearly so important.

On the Mexican frontier we have more than a thousand miles exposed to outrage by the Indian and the foreign bandit. The want of protection, and the cry for help from the American citizens along that line, daily appeal to the sympathies of Congress, which yet shrinks from marching regiments to that distant field, because of the vast expenditures such movements necessarily involve in the present condition of the country. Government appears almost unequal to its just responsibilities; and the people, so remote from Congress, begin to feel that they are no longer objects of national care. The most careless must observe that, if this state of affairs continues to exist, there is no alternative but to abandon the women and children of that frontier to a hard fate, or to meet such expenditures, however vast, as may be demanded by the exigencies to which the frontier is exposed.

The true remedy for these evils is the construction of railroads, by which space is rapidly overcome, and military energy most speedily concentrated at a given point.

The two routes indicated herein as proper objects of public encouragement, lie through countries which are already traversed by the emigrant, by troops of the United States, by mail stages and transportation trains. Every foot of transportation afforded by railroad, on either line, would be an amelioration of *existing public burdens*, and will substitute a superior conveyance for that which government already uses, albeit at a most tardy and limping gait. There will be no clashing of interests between the two routes—indeed there would be none were three routes instead of two selected. They penetrate different sections of a great country—the one cannot supply the wants to which the other ministers—the conditions of their prosperity have no relation to each other—they do not touch the same States, or pass through the same communities—they will develope the differing capacities of different regions; yet they will, one and all, assist to bind together, from east to west and north to south, that great whole which is *our country*, whether it lies under the tropical sun, or in eternal snows.

We will not argue the proposition that Congress may, in the exercise of a wise discretion, enter upon contracts for the transportation of mails, munitions of war, troops and public agents, with railroad companies, even in advance of the completion of their roads; we think that power is indisputable and the exercise of it limited only by the sound discretion of Congress.

But in the nature of the contracts now proposed there seems to be involved a very large expenditure of the public treasure, from which the prudent shrinks, though the necessities which call for it are admitted to be urgent. We humbly offer some answers to the objec-

tions on this score which are, in our own opinions, sufficient to allay these fears.

1. *The credit to be employed is never to be in advance of the work actually completed upon the road; so that the government will never be without security in hand for every cent of credit it will have advanced.*

We assume that the capital exhibited, by way of credit to the company, is amply secured when the road in working order is held in lien by the government, and there are no prior incumbrances upon it.

Fifty miles of finished railroad in working order upon a line which develops the latent energies of a rich country, and which will become the accustomed vehicle of a great commerce, affords always perfect security to a capital that is not equal to two-thirds of the cost of its construction. In market overt it should always bring the money for which it stands pledged, and we have no doubt that under a fair sale capitalists would be found ready to invest at that rate under ordinary circumstances. Banks discount upon shipments seeking markets upon less security, because the markets are always uncertain; here the work of the road in question cannot be regarded as uncertain.

It is not proposed to advance a dollar or to engage the credit of the government in any way, until the company with whom the contract is made shall have completed fifty miles of their road, and the commissioner appointed by the President to inspect it shall return the fact that the road is in complete working order. The issue of the bond of the United States will then bear in its amount only a certain percentage upon the cost of the road on which the government takes the first lien. Were the credit advanced to amount to $20,000 per mile, the bond would only be a million of dollars, payable at thirty years after date, with coupons attached paying an interest at the rate of five per cent. per annum. Before the government would again open a credit for another million, the company would have to complete another section of fifty miles contiguous to the first; so that a delay in the work of this road would dispense with additional expenditure by the government, and, within a limitation expressed in the act, would operate as an abandonment of the contract and property of the government, which would then have in the road ample means with which to meet the bond before its maturity, by sale or transfer of the road to other parties.

But if the company shall continue the work to completion, then the credit becomes *immobile* and *invested perpetually;* the government depending upon the security of the road to assure its capital, and relying that the service it will demand of the road will annually equal the interest the government will be called on to pay upon its bond. It is plain that if the annual service rendered by the road discharges the amount of the annual coupon, the government will have done no more in the operation than to exhibit a capital which it is already using every year as upon an investment. What difference to a government or an individual is there between raising $5,000 per year upon a concealed capital, and lending that capital upon undoubted security to another, in consideration that he will secure the capital and pay the $5,000 per year?

The result is exactly the same; only in the one case the capital is

retained whose interest is expended, and in the other the capital is exhibited whose interest is expended, and, in the hands of a third party, may, meanwhile, be used as an active credit. If the owner of the capital, always secure, has a necessity for the expenditure of the interest, it is a familiar fiscal operation to convert it into an annuity. This problem has just that extent—no more.

In this operation the government advances to a company a limited credit, upon a contract which secures several great advantages, without any risk.

1st. The advantage of developing a valuable commerce with a neighboring people, and at the same time of developing to our own industry new and extensive fields, now closed against enterprise on account of their distance from market.

2d. The advantage of securing the means of rapid transition for men and supplies to any point of our extensive frontier, and the capacity to concentrate masses of men upon any point of a long and exposed coast; for it cannot be doubted that the means of transferring sailors and soldiers to the Pacific shore in a few days is a substantial equivalent for an army ready for the field, or a naval squadron ready for the sea.

3d. The government secures the advantage of stipulating, now, that the rates of transportation shall always be fair, since it is to have the right to arrange them through its own officers, and the further advantage that it shall, at fair rates now arranged, have the exclusive use of the road whenever the public exigencies shall, in the opinion of the President, require such exclusive use of the road. Any one conversant with the unmerciful speculations made out of the government when a sudden emergency demands prompt action without regard to expense, will realize the fact that these stipulations may be accepted with perfect prudence, and indicate a wise forecaste. The terms of contract are indeed very advantageous, provided the government is likely to have so constant a demand upon the road that the interest upon its coupons shall not become an additional charge upon the capital it employs.

It will be observed, in regard to the interest account, that the road is to commence service the instant the coupon begins to draw interest; wherefore, if the service equals the amount of the coupon in the course of the year, the government will have done no more than to exhibit the capital, which, being secure, the government has not expended an additional dollar to those it now expends.

We remarked above that the business of the southern road, at least, would not be uncertain, and we believe that the remark is true of both the roads presented for the favorable consideration of Congress. That conviction rests upon the fact that the advancing population of this country has already established systems of railroad improvement by which the true location for the extension of our continental thoroughfares may be as readily ascertained to-day as a century hence. They must be axes as well of populations as improvements. They will be carriers of a magnificent commerce to be poured upon them by a collateral system of works in which already a thousand millions of dollars are invested, and in which a thousand millions more will be invested before a century elapses.

There is no longer any uncertainty in this matter. The history and the prospect of our country point to where these axes are and must be. Take the section of the Union bounded on the north by the lakes, on the west by the Mississippi, on the east by the Alleghanies, and on the south by the Gulf of Mexico. It is bisected by the Ohio river navigation from Pittsburg to Cairo. In the northern half lies the broad plain from the Ohio to the lakes, divided by the railroad system, whose *axis is the central line from Pittsburg to St. Louis*. Other lines meet other conditions; the lake shore roads run parallel to this axis, yet this line passes through the heart and centre of the population and improvements of the country, and points westward, unerringly, to the true extension of this system beyond the Mississippi. There can be no mistake that a line extending the lake shore roads to the mouth of the Platte, and a line extending the St. Louis roads to the west, embrace between them the country through which the prolongation of the true axis of the future system of railroads west of the Mississippi should run. Lines converging from Omaha and Leavenworth would meet the widest conditions necessary for a wise solution of the problem of extension. It may be met to-day as well or better than thirty years hence, for to-day no foreign wars or civil broils exist to stay our energies or waste the substance of the nation. The clouds upon our horizon are not charged with storms; the sun of peace and liberty shines gloriously upon the land we are contemplating, and no fear for its magnificent future can inhabit the breasts of men who are fitted to shape its destinies.

Take the country south of the Ohio to the Gulf. Here is another great belt—staples, institutions, social and domestic, differing from that first noticed—an agricultural people, more sparse than their northern brethern, but following just as surely and steadily the belt of country *they* are destined to populate. Their railroad system, too, has *its axis*. It is plainly the parallel of 32° beyond the Mississippi. Already the keen and discerning eyes of judicious capitalists have marked out the initial point of the future proper extension. Already New Orleans sends her Opelousas road up towards this point, Vicksburg her road across to it, Memphis her road by way of Little Rock, Cairo hers from the mouth of the Ohio through Fulton, and St. Louis connects with this centre also by the southwest branch through Fort Smith. The apex of the cone *is about the intersection of these pointers to the true line*, and the Southern Pacific Railroad Company has already engaged in the work of constructing that line, generously seconded by the State of Texas, through whose broad domain it will extend nearly eight hundred miles. There may be other feasible and practical routes across the continent, but there can be none to meet all the conditions which render the route along the parallel of 32° so valuable. It is the true axis, to which southern populations and the southern system of railroad improvements will gather, and it is destined to be the vehicle of a splendid national commerce. Looking upon these exponents of the enterprize of the American people, the friend of the Union must regard with satisfaction the fact that from the axis of the northern system to that of the southern system other lines of railroads traverse and interlace the intervening country, tapping the Ohio at

Wheeling, Marietta, Cincinnati, Madison, Louisville, Evansville, and Cairo, and showing by their inclining that they lead towards great trunk-lines which—the aortas of the continent—pass the life-blood of commerce and civilization from the Atlantic to the Pacific shores. These are better than the silken bands of ephemeral political sentiment: they are solid contributions by manly enterprize to gird together the foundations of our common country by ties of mutual interest and dependence. They establish the union of the American people upon the broad basis of a facility of intercommunication, a prosperous internal commerce, and a fraternal civilization which, admitting some peculiarities attributable to climate, established interests, and educational eccentricities, still holds fast to the main inheritance which is the pride of every patriotic American heart.

In the judgment of the minority of this committee, the proposition to push forward to the far west one of these main lines, and not the other, is eminently unwise under the circumstances by which the Congress is now surrounded. Congress, by its adoption of the single line recommended by the majority, may impress the public mind painfully with an idea that the domination of a sectional representation has begun already to become oppressive, and that the power of numbers will be exerted in these halls without regard to even-handed justice. Nature has established the several feeders for both these lines. We may gnarl the tree: we cannot prevent the separate growth, where nature has decreed it. A wise forecast, accepting her conditions, will, by judicious and equal legislation, so encourage both these lines, that a thorough conviction shall pervade all men and all sections, that in providing for the settlement and development of this country Congress has an equal care for the wants and the real interests of every part of it.

Still the question recurs: Will the service to be rendered by these roads to government equal the amount of the coupons for the year? The answer to this material question triumphantly vindicates the policy we advocate.

It may be assumed as true that the government will not be called on within thirty years, *without the roads,* to pay *less* for postal accommodation and military transportation than is paid this year. The mail contracts for service to the Pacific alone amounts to two millions of dollars. The quartermaster general has a transportation account exceeding five millions of dollars, of which three-fourths arises from the necessity of sending men and supplies to the distant western posts and to the shores of the Pacific. Discard all consideration of time, insurance for safety of transit, military security, efficiency in war, and commercial ameliorations, and it must be perceived that in the items we have quoted—two items—government is now spending more annually than the coupons which would attach to a hundred millions of dollars, were that sum at once advanced in aid of these great national enterprises. It is not proposed to engage the credit of the government for both roads more than a hundred millions, and the bonds will scarcely exceed two millions in any one year. The redemption of these bonds will be scattered through as many years as their issue, and in no one year can they be onerous to the government, were gov-

ernment disposed to compel the company to their redemption, which it is presumed that the government will never be willing to do. Of the ability of the company to redeem the bonds before their maturity there need be little doubt; indeed, the minority believe firmly that the business of the government itself will pay the coupons and enable the company to create a fund to redeem the principal before the maturity of the paper; but if not, at least to pay the interest perpetually.

Under these views, the minority recommend the House to pass the amendment, which they submit herewith, authorizing and directing a contract with the Southern Pacific Railroad Company for the transportation, through future years, of the mails and troops of the United States upon the terms therein specified. All of which is respectfully submitted to the consideration of the House.

A. J. HAMILTON,
One of the Committee.

APPENDIX A.

CAPTAIN HUMPHREY'S LETTER.

Routes for a railroad to the Pacific.

MESSRS. EDITORS: I have just seen, for the first time, in your paper of the 3d instant, a correspondence between the Hon. R. E. Fenton, member of the House committee on the Pacific railroad, and F. W. Lander, esq., relative to the different routes proposed for a railroad to the Pacific ocean.

As I have for a considerable time, under the direction of the War Department, a general charge of the exploration and surveys ordered by Congress to ascertain the relative feasibility of these different routes, and as some of the conclusions of Mr. Lander are directly the reverse of those promulgated by the department, after a careful examination of the results of the labors of the various parties engaged upon that work, I think it incumbent upon me to indicate to you in what respects these conclusions differ from those of Mr. Lander, and upon what information they are based.

Before proceeding to do this I would remark that, if there is to be but one railroad to the Pacific—and I think but one can be built for many years—I should regard it as unfortunate, in a military point of view, should that road pass through the Mormon settlements. They are and probably will continue, so long as they exist as a separate community, hostile to the United States; and, in the event of a war with a great maritime power, when we should probably be entirely dependent upon that railroad for communication with the Pacific States and Territories, they could and very probably would interrupt this line of communication. Their location upon the so-called central route (forty-first parallel route) is to my mind a serious military objection to it.

There are two conclusions of Mr. Lander to which I wish particularly to call your attention, namely, that the *southern route is seven hundred miles longer than the central route, and that in the "wild interior;"* and that the character of the country through which it passes is such, both as to form and productions, that it will require *twice as much aid to construct and maintain a railroad over it as over the central route.*

As Mr. Lander has not passed over any portion of the southern line, his opinion as to the character and cost of that route is not based upon personal observation. All the routes have been examined by well organized parties, and the results of their observations, instrumental and personal, have been published by Congress. The means of ascertaining what are the great characteristics of each line that has been examined are thus within the reach of those who desire to compare them. From these publications the following figures are taken:

Considering first the distance from the Mississippi river to the Pacific Ocean, we find by the so-called central route (that of the forty-first

parallel) that the distance from Rock Island to Benicia is 2,299 miles. By the southern route (that of the thirty-second parallel) the distance from Gaines' Landing to San Diego is 1,683 miles; and from Gaines' Landing to San Francisco 2,174 miles. The southern route is, therefore, *one hundred miles the shorter of the two, even if the necessary length be increased five hundred miles in order to make San Francisco the terminus of the road.*

But it may be objected to this view of the subject that, for a proper comparison of relative lengths, the routes should start from a common central point on the Mississippi river. If so, St. Louis may fairly be the point selected. Whether viewed geographically or in connexion with the lines of railroad travel and traffic east of the Mississippi, no position further north can justly be assumed. If it be claimed that the route named the central starts from a point on the Missouri near Westport, some two hundred and fifty miles west of St. Louis, the relative length of the two routes is not affected thereby, for the southern line may here diverge from a common trunk to St. Louis with an equal reduction of length. By the so-called central route from St. Louis to San Francisco the distance is 2,415 miles. By the southern route the distance from St. Louis to San Francisco is 2,484 miles. Under the conditions, then, that the Pacific railroad shall start from a point on the Mississippi, central both geographically and in connexion with the lines of travel and trade east of that river, we find the southern route *sixty-nine miles, and not seven hundred miles, longer than the so-called central; and this additional length is not through the barren interior region, but through a fertile country, within one hundred miles of the Mississippi river.*

But it may be said that the true distance for comparison is that which separates San Francisco from the great centres of trade on the eastern coast. Estimating the distances thus to be added by the lengths of railroads built, building, and projected, as laid down on the best "railroad maps," we find:

	Miles.
New York to San Francisco, by so-called central route, (41st parallel) - - - - -	3,284
New York to San Francisco, by southern route, (32d parallel) - - - - - - -	3,359
Difference in favor of so-called central route - -	75
Charleston to San Francisco, by so-called central route, (41st parallel) - - - - - -	3,227
Charleston to San Francisco, by southern route, (32d parallel) - - - - - - -	2,974
Difference in favor of southern route - - -	253

	Miles.
New Orleans to San Francisco, by so-called central route, (41st parallel) - - - - - -	3,107
New Orleans to San Francisco, by southern route, (32d parallel) - - - - - - -	2,426
Difference in favor of southern route - - -	681

Thus we see that the sum of the distances by the so-called central route from the *three great ports of the east to San Francisco is* 859 *miles more than that by the southern route.* If San Diego be made the western terminus of the line for the southern route, and San Francisco that for the so-called central route, *this difference in favor of the southern route becomes over* 2,300 *miles.*

Moreover, the length across the great uncultivable belt of the interior (so called because the fertile portions are comparatively small in extent) *is* 210 *miles less in the latitude of* 32° *than in the latitude of* 41°.

How, then, considered from any point of view, can it be said that the southern route is 700 miles longer than the central, and especially that these additional 700 miles lie in the "wild interior."

The question of comparative cost of the two routes is evidently a much more intricate one than that of their respective lengths. The subject must be examined with a detail which would extend this letter beyond all reasonable limits were I to attempt to demonstrate the truth of my opinion, formed in the winter of 1854–'55, after a careful study of the great characteristic features of these two routes, of their lengths, of the nature of the ground they pass over, of the obstacles they present, of the facilities they afford, of their natural productions and population, &c. The reasons in support of this opinion are given in full in Vol. 1 Pacific Railroad Reports; and I may add that all subsequent information has tended to confirm the conclusions therein stated, namely, that *the cost of construction on the southern route, from the Mississippi river to the Pacific ocean, would be but little more than one-half of that upon the route of the* 41*st parallel,* (*the so-called central route,*) *from the Missouri river to Benicia; and that the cost of the first named route extended to San Francisco would be but about two-thirds of that of the so-called central route from the Missouri river to Benicia; and, further, that the travel, freight, and cost of maintenance of each would not be materially different.*

With respect to the recent development of the resources of the country on the so-called central route, it may fairly be considered that, granting that the Platte valley will have the aid of the Pike's Peak and Utah population to aid in its construction, the southern route will have that of New Mexico, Arizona, and Sonora. If the mineral and agricultural wealth of Pike's Peak, Utah, and Washoe will contribute to the support of the Platte valley route, so will the mineral and agricultural wealth of New Mexico, Arizona, and Sonora assist in maintaining the southern route. The settlements that would precede, accompany, and follow the construction of a railroad to the Pacific,

would not, in my opinion, be less numerous nor less extensive on the one route than on the other.

With these few and hasty remarks, I have the honor to remain, very respectfully, your obedient servant,

A. A. HUMPHREYS,
Captain Topographical Engineers.

NEW YORK, *April* 9, 1860.

Table showing the lengths, sums of ascents and descents, equated lengths, cost &c., of the several routes explored for a railroad from the Mississippi to the Pacific.

	Distance by air line.	Distance by proposed railroad route.	Sums of ascents and descents.	Length of level route of equal working expense.	Comparative cost of different routes.	No. of miles of route through arable land.	No. of miles of route through land generally uncultivable, arable soil being found in small areas.	Number of miles at an elevation above the sea between— 0 and 1,000 feet.	1,000 and 2,000 feet.	2,000 and 3,000 feet.	3,000 and 4,000 feet.	4,000 and 5,000 feet.	5,000 and 6,000 feet.	6,000 and 7,000 feet.	7,000 and 8,000 feet.	8,000 and 9,000 feet.	9,000 and 10,000 feet.	Altitude above the sea of the highest point on the route.	
	Miles.	*Miles.*	*Feet.*	*Miles.*														*Feet.*	
Route near forty-first and forty-second parallels, from Council Bluffs, via South Pass, to Benicia	1,410	2,032	29,120	2,583	$116,095,000	632	1,400	220	170	210	160	590	28[illegible]	270	107	20	....	8,373	
* Route near thirty-eighth and thirty-ninth parallels, from Westport, via Coo-che-to-pa and Tah-ee-chay-pah Passes, to San Francisco	1,740	2,080	49,985	3,026	Impracticable.	620	1,460	340	276	165	348	466	170	60	155	80	20	10,032	Tunnel at elevation of 9,540 feet.
Route near thirty-eighth & thirty ninth parallels, from Westport, via Coo-che-to-pa and Madelin Passes, to Benicia	1,740	2,290	56,514	3,360	Impracticable.	670	1,620	275	308	190	143	725	284	110	155	80	20	10,032	Tunnel at elevation of 9,540 feet.
Route near thirty-fifth parallel, from Fort Smith to San Francisco	1,550	2,096	48,521	3,015	106,000,000	646	1,450	585	290	261	236	181	295	222	26	....	....	7,550	
Route near thirty-fifth parallel, from Fort Smith to San Pedro	1,360	1,830	48,862	2,745	92,000,000	420	1,400	354	292	236	210	185	295	222	26	....	....	7,550	Tunnel at elevation of 4,179 feet.
Route near thirty-second parallel, from Fulton to San Francisco, by coast route	1,630	2,024	38,200	2,747	†90,000,000	834	1,190	893	347	120	342	271	50	....	....	...	....	5,717	
Route near thirty-second parallel, from Fulton to San Pedro	1,400	1,598	30,181	2,169	68,000,000	408	1,190	478	337	120	342	271	50	....	....	....	....	5,717	
Route near thirty-second parallel, from Fulton to San Diego	1,360	1,533	33,454	2,167	‡68,000,000	374	1,159	420	305	125	362	271	50	....	....	....	....	5,717	

* Supposing the route to be a straight line, with uniform descent, from the Un-kuk-oo-ap mountains (near Sevier river) to the entrance of the Tah-ee-chay-pah Pass—the most favorable supposition possible.

† The estimate of Lieutenant Parke for the construction of a railroad by this route, from Fulton to San José, is $92,812,750. Adding $2,025,000, the office estimate for the route from San José to San Francisco, Lieutenant Parke's total estimate from Fulton to San Francisco would be $84,837,750.

‡ The estimate of Lieutenant Parke for this route is $59,005,500.

The sum of the minor undulations (not included in the sum of ascents and descents here given) will probably be greater for the routes near the 47th and 49th parallels than for the other routes.

With the amount of work estimated for the roads in this report, the equated lengths, corresponding to the sums of ascents and descents, have but little practical value. With a full equipment and heavy freight business, the sum of ascents and descents becomes important.

APPENDIX C.

LIEUTENANT MAURY'S LETTER.

[Communicated for the National Intelligencer.]

Pacific Railroad.

OBSERVATORY, WASHINGTON, *January* 4, 1859.

MY DEAR SIR: My last was dated about two weeks ago.

I have often wished that the question, pure and simple, railroad or no railroad to the Pacific, could be put to the popular vote of the nation. Never, since the Memphis convention of 1849, should I have had any doubt as to the result: the vote would be largely for the road.

While all admit the importance of one or more such railways, there has been such a diversity of opinion as to routes and plans that no *one* route has as ye tmet with friends enough to carry it through in spite of its rivals, and I do not think ever will.

Two roads at *least* are necessary. At *least* two roads, one at the north and one at the south, are required for the common defence. At least two roads, one at the south and the other at the north, are necessary socially and commercially; for by two roads so placed the markets of China, Japan, and the Amoor will be brought nearer to us by many days' sail than it is possible for one road to bring them. This may sound paradoxical, yet I hope, before I am done, to explain the paradox to your satisfaction.

Let us first consider the importance of two roads in their military aspect.

Vancouver island commands the shores of Washington and Oregon Territories; and whether the terminus of the northern road be at Puget's sound or at the mouth of the Columbia river, the munitions sent there in war could be used for no other part of the coast, for Vancouver overlooks them.

They could not, on account of Vancouver in its military aspects, be sent from the northern terminus to San Francisco and the south; nor could the southern road, supposing only one, and that at the south, send supplies in war from its terminus, whether at San Diego, San Pedro, or San Francisco, by sea either to Oregon or Washington. Vancouver would prevent; for Vancouver commands their coasts as completely as England commands those of France on the Atlantic. So complete is the military curtain which a juxta island affords to a coast, that you never heard of France on the Atlantic sending succor by sea to France on the Mediterranean, or the reverse, in a war with England. The Straits of France are as close as the Straits of Gibraltar.

In preparing for the national defences of the Pacific, this fact, and the circumstance that Vancouver's island is in the hands of a foreign

power, are well calculated to impress peculiar features upon any system that may be adopted for that coast.

But I promised to explain why two roads, one at the south, the other at the north, will bring the markets of Asia much nearer to us than either road singly would make them. Before, however, I go into that explanation, let us clear away some of the ideal obstacles which error has placed in the way of a northern route to the Pacific.

Most men of our age were educated under the belief that parallels of latitude and terrestrial climates are correlatives; that we might tell the temperature of any unknown country or region of country if we knew its latitude. Humboldt and Dové exploded this idea with their isothermal lines. For example, they show that the mean annual temperature of North Cape, latitude 70° in Europe, is the same as that along the north shore of Lake Superior, in latitude 50°. So here is a difference of twenty degrees of latitude without any difference in the average annual temperature of the two places. There is a difference in the length of day and night at the two places; and, so far as climate is affected by difference in the length of day and night, climate is to that extent and no further an affair of latitude. But with differences in length of day and night, the relations between climate and latitude cease; the thermometer and hygrometer then become the true exponents of climate. Every region, indeed, tells the whole story of its climate by its flora.

Let us get rid, then, of our old notions concerning the relations of latitude to climate, and with unbiased minds lay out this north temperate zone which we inhabit into two grand thermal bands, and then study the flora of these bands. After we shall have done this, then I think we will be able to agree, at least among ourselves, as to the necessity of two routes to the Pacific. Moreover, we can, by so dividing, select those routes that will be the best agriculturally and commercially; and when we shall have finished with their investigation, you will find that these two routes lie exactly where the best plan of national defences requires them—the northern route commencing at the western boundary of Minnesota and going to Puget's sound, with a branch in the course of time to the mouth of the Columbia; the southern route commencing at El Paso, in Texas, and going thence to San Pedro or San Diego and San Francisco.

I speak of these routes as the routes which commerce and agriculture as well as war require. The elements indicate them, the country needs them, and the people will have them. I place the climatology of these routes, the agricultural and commercial resources of the regions through which they pass, in the same category, because commerce is based on difference of agricultural productions, and difference of production is an affair of climate altogether. Therefore, in studying climates and routes, we must study variety of production, and cannot help looking at them in their commercial aspects.

The Army Meteorological Observations, Blodget's Climatology of the United States, and Dové's Isothermal Maps, enable us to divide that portion of the northern temperate zone occupied by the United States into two grand and characteristic thermal bands. The fauna

and the flora of these two bands differ. The people differ, the climates differ, the industrial pursuits in them differ, and therefore I call them grand and striking subdivisions. Speaking in a general way, the United States lie between the mean annual isotherms of 35° and 70°. Take a school map of the world, and let us draw, with a pencil, these isotherms across Europe, Asia, and Africa also.

Beginning on the west coast with the pencil at Sitka, draw it with a free hand thence through the mouth of the Red River of the North, touching the north shore of Lake Superior, crossing the St. Lawrence below Quebec, and thence to St. John's, Newfoundland. Now, beginning in Europe, near Christiania, draw your pencil up towards the Gulf of Onega, then draw through Orcaberg to Kiachta, Marghen, and the mouth of the Amoor. You can now see sufficiently near, for our present purpose, how the isotherm of 35° runs. The mean temperature of all places south of this line is more than 35°.

In like manner we may sketch off roughly the annual isotherm of 70° through the New World and the Old. It starts from San Diego, crossing the Colorado at its mouth, and then passing down through Chihuahua City to Austin, in Texas, it goes by New Orleans and Pensacola to the sea. Striking the African coast near Mogador, it goes through Cairo, Ispahan, Delhi, to Canton. The mean temperature of all places to the north of this line is less than 70°.

Now, let us divide the belt included between these two isotherms into two nearly equal thermal bands, by tracing likewise, with a free hand, the isotherm of 52°, the mean (nearly) between 35° and 70°.

Beginning near Cape Orford, on the west coast, this isotherm passes up towards the Dalles, then down a little to the west of Salt Lake to Santa Fé, then up to Council Bluff, on the Missouri, and then through St. Louis and Louisville to Baltimore. Taking it up in England, it passes thence through Belgium towards Zurich, then up towards Olmutz, and so on through Varna, Derbent, Kokan, and Pekin.

This line divides this belt thermally and geographically into two bands of nearly the same size. They include the garden spots of the earth. In them man laid his first hearthstone, and from them the lights of civilization and Christianity have shed their first and their brightest rays.

Let us, for the convenience of reference, call the nothern band the upper band, and the southern one the lower. We are now prepared to cast the eye over them, and to generalize concerning the commercial and agricultural aspects of the two routes.

The plants which give physiognomy to the fields and forests of these bands are for the upper bands, conifers, the willow, the beech, the larch, fir, alder, elm, hickory, birch, cranberries, and pasture grasses. For the lower band, the characteristic plants are thick-leaved evergreens and arborescent grasses, the cypress, cedar, ash, and magnolia, with roses.

The chief commercial plants, besides the cereals, which are common to both, are for the lower band: the orange, the vine, the fig, peach, date, pomegranate, citron, the melon, St. John's bread, the sweet potato, rice, indigo, tobacco, hemp, cotton, tea, sugar, and naval stores.

For the upper band: buckwheat, hay, Irish potatoes, turnips, apples, pears, plums, with herds and flocks among its fauna.

With these two grand divisions of the temperate zone thus delineated, and with this description of their characteristics, we may now proceed to cast the horoscope for that portion of the country which lies between the Mississippi river and the Pacific ocean. To read its future for present purposes, we have only to glance the eye over the well-developed parts of each band, both in the Old World and New; then we shall see that an upper band railway to the Pacific is a "fact" which philosophy, teaching by example, compels us to regard as "fixed."

A mere glance at a map of the world will show you that most of the railways, both in Europe and America, are in this upper band; that in it are the great commercial centres of the world, as New York, Liverpool, London, and the German ports of Europe; that it is to the cities of this band, as Leipsic, Nigni, Novgorod, Kiachta, &c., that the people both of Europe and Asia annually resort to hold their great fairs.

Contemplate also the people of this band in their industrial aspects, and you will see that it is the ship-building and seafaring region, the home of the fisherman, the sailor's father-land, and the place for factors, factories, and operatives.

The industry of this band is marked by minute subdivisions of labor and great diversity of pursuit among its inhabitants—a sure sign that their occupations are, to say the least, not so exclusively agricultural as are the occupations of those who inhabit the lower band.

After thus drawing our lines and consulting the lights displayed within them, it will, I am persuaded, require no great art of divination to satisfy you that a railroad along this upper band to the Pacific may be looked upon as a "fixed fact." I tell you, one is *obliged to be built there.*

By thus passing these two bands in review, we are further reminded that the people of the north temperate zone, in spite of legislative enactments, tariffs, and protection, have obeyed the laws enacted by nature for the geographical distribution of labor; that according to these laws each band has been occupied and replenished; and that man, though the same in both bands, has in each heeded those physical conditions by which he finds himself surrounded, and directed his labors to those pursuits which promise the best returns.

This circumstance reminds us that railways feeding given areas in the upper band should be much more apt to have full freights both ways than are railways feeding like areas in the lower band. The latter carry away tobacco, hemp, cotton, rice, sugar, &c., and may bring back in a single car the manufactured articles for which a whole train load of cotton has been exchanged. Hence, as a rule, railroads in this band carry more than they fetch. The same raw and bulky articles go into the upper band to be manufactured, and when manufactured they are put on the rails for distribution and for market, thus increasing freights for this band both ways.

Each one of these thermal bands in the United States wants its

road from sea to sea, and each must have it. Each wanted its system of roads between the Atlantic ocean and the Mississippi river, and each has it, whether Congress would or not; and so it will be between the "Grand Ocean" and the Mississippi.

Look at the steel engraved map in Appleton's Railroad Guide, and you will see how these systems of roads have been formed. Until last summer Virginia would stretch no railway line from any of her fine harbors into the valley of the west. North Carolina had no harbors, whence the blank space on that map between Ohio and Georgia.

On the other hand, there was the great chain of the lakes. Then there was the Baltimore and Ohio and the Pennsylvania Central railroads, which were commenced at a very early day, and pushed forward with vigor. Now see what a network of roads those have called out, reaching to and beyond the Mississippi, and stretching due east to connect with these.

While Virginia would not and North Carolina could not, South Carolina and Georgia went to work with their system of roads, which has already stretched itself towards the setting sun, far beyond the Mississippi.

Texas has given a most magnificent grant of lands and loan of money to her South Pacific railway, which will extend the southern system as far as El Paso, within 600 miles* of the Pacific.

Roads from New Orleans, Vicksburg, Memphis, and other points, are to join the Texas road. Memphis and El Paso are in the middle of the lower band; hence, you perceive, this band has its roads well under way, and it is high time Uncle Sam should take hold and extend it westward.

Unfortunately, this road has had troubles to an extraordinary degree, "but it is a long night that has no day," and it now begins for the first time to see the light of real day. The dawn is promising.

So, too, in Minnesota. St. Paul is in the centre of the upper band, and there is a railroad already under way from St. Paul to Pembina. A branch from this road leading to the Pacific will most fairly represent the system in the upper band. St. Paul is in the middle of it, and the distance by an air-line from the western limits of Minnesota to Puget's Sound is 870 miles, making only (say) 1,500 miles of road to be provided for by the general government in order to secure both of these roads. Indeed, if the southern road be taken to the California line, California will take care of it thence to San Francisco; so that, by providing for the construction of some five hundred miles, government can now secure one at the south.

Ten years ago, when this question of a road to the Pacific began first to be agitated, government would have had to provide for it all the way from the Mississippi to the Pacific. So it was held; and that would have required a single road about 2,000 miles long. Now government aid along 1,500 miles will give us two.

These bands give a complete quietus to all objections to the northern road on the score of climate. In other parts of the world roads abound

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* Geographical miles of 60 to a degree of latitude.

in just such climates. The road from St. Petersburg to Moscow, and the Prussian roads, with others in the same band, in Europe, are even in a higher latitude than the St. Paul will be. Yet, climate is no objection to them. Neither is it to the Canada railways, nor to any others as far north as the rails have been laid. We all expect to see the day when Russia will be extending her system of rails into Siberia; and none of us—for in that matter all of us have unbiased minds—anticipate any difficulty on the score of climate.

Rain maps for these bands show that the average annual amount of rain along this northern route, and until you pass the Rocky mountain range—after which the climate is mild, like that of England—is less than it is along any railway in the Atlatic States, or in the Mississippi valley, or, indeed, in any part of the world. They show that the average amount of precipitations, both snow and rain, in winter, for that part of the route which lies between the Pacific range of mountains and St. Paul, is less than three inches. Thus, I think, the question of climate, of terrific snow-storms, and impassable drifts along this route, may be considered as disposed of.

We return now to the paradox that by these two roads to the Pacific the markets of Asia will be much nearer to those of the Mississippi valley than either road alone could bring them. To explain this it is only necessary to remind you how the winds blow and the currents set that control the routes of the sailing vessels—the burden-cars of the sea—between the eastern shores of Asia and our west coast.

The route to Asia lies through the northeast trade-winds. These winds blow between the parallel 30° north and the equator, and vessels that take this route usually run across the broad Pacific between the parallel of 18° and 25° north, where the trades are strongest. Returning, they take the great circle route—the shortest distance—and keep well up to the north, for now the "brave west winds" of those extra-tropical regions, which would have been adverse for the outward voyage, are fresh and fair for the homeward run. So you perceive that a vessel trading under canvas between our Pacific States and China describes on every round voyage an ellipse. Coming out of the Straits of Fuca or the Columbia river, for instance, her course is first to the southward, as though she were bound round Cape Horn, and until she gets into the northeast trade-winds. Her course is then west until she enters the waters of the China seas. She then hauls up to the northward and westward for her port. On the return voyage her course, on coming out of her Asiatic port, is to the northward and eastward until she gets fairly within the "brave west winds." With these she steers to the eastward, following the great circle route, gradually shaping her course to the south of east, until she reaches our own shores again. If she be bound to San Francisco her route, until she gains the offing of the Straits of Fuca, would be the same as though she were bound into Puget's Sound or the Columbia river.

Thus you perceive that, on the eastward voyage, San Francisco is on the wayside *from* Puget's Sound and Columbia river to China, whereas Puget's Sound and Astoria are on the wayside of the route *from* China and Japan *to* California.

To see how one road only would work, let us first suppose it at the

north, running from St. Paul to Puget's Sound. Let us now follow a package of merchandise, say of ginseng, that is sent over this road from Memphis to be bartered in China for tea. The ginseng would first go north up the Mississippi to get to the road; thence it would cross to the Pacific; arriving at Puget' Sound, it would then be shipped for China. Now it must come *back to the south again to get into the trade-winds' region.* Thus you observe it would have to go more than a thousand miles up the Mississippi out of the way, and when it reached the Pacific it would have to return again as far to the south and further than it was when it started. Being exchanged for tea in China, it would be nearest for the tea to stop at Puget's Sound, take the northern railway and come south on the Mississippi, instead of coming south by sea along the Pacific coast.

Now, let us, in imagination, place the road at the south instead of at the north, and take a bale of furs to illustrate the route of trade, and travel from the upper band. The fur, we will suppose, is sent from St. Paul. It comes down the Mississippi to get to the road; that would not be out of the way for the *fur*, for it is bound south for the northeast trade-winds at any rate, and it would be, in a national point of view, perhaps more desirable to have it go south by the Mississippi than by sea on the Pacific. But when the silk, for which it has been exchanged in China on St. Paul account, arrives on its return off the entrance of the Straits of Fuca, it has to turn out of its way. Instead of finding railway transportation to take it through from Puget's Sound across to Minnesota, it has to run away to the south. Perhaps a week after it might have been in St. Paul by a northern road, it arrives by sea in California and is carried by rails to Memphis. Now it has to *double upon itself to go north and recross every parallel of latitude that it crossed after turning out of its way from Juan de Fuca.* This doubling will require two or three weeks of time, besides much additional risk and expense.

With two roads there will be no *doubling;* hence two roads will bring China and Japan and Russia very much nearer to the Mississippi valley than one can do. The distance saved will be in furlongs nearly twice the length of the Mississippi river, and in time some two or three weeks. Whether the government, therefore, aids in the building of these roads or not, these circumstances will of themselves call for the construction of at least two roads to the Pacific—one at the north, the other at the south. Northern capital and southern capital will assist in both.

I have thus endeavored to make clear the paradox with which I set out; and I hope I have succeeded in showing to your satisfaction that at least two railways—one at the north, the other at the south—are required to the Pacific They are commercial necessities.

There are no toll-houses on the lakes, and none on the Gulf of Mexico. The commercial voice of these two waters, could it be heard, would be raised, each trumpet-tongued, in favor of these two roads.

The nearest way from Brazil and the Amazon, as well as from the West Indies, to China would then be by the South Pacific railway.

I did not intend to write you so long a letter, but the interest I feel in the subject of it has carried me away.

I intended to pass with you the compliments of the season, and to wish you and yours a happy new year, and ask you to believe me yours truly,

M. F. MAURY.

D. A. ROBERTSON, Esq.,
St. Paul, Minnesota.

APPENDIX D.

A. H. Campbell's letter.

DEPARTMENT OF THE INTERIOR,
Pacific Wagon-road Office, April 26, 1860.

SIR: In reply to your letter of the 25th instant, requesting my opinion as to the most practicable route for a railroad from Fort Yuma to San Francisco, I will briefly state that, regarding *directness* as one of the most essential requisites in the location of a railroad, in my opinion the proper route from Fort Yuma to San Francisco, in point of directness and cheapness of construction, is *via* the San Gorgonio Pass, San Bernadino valley, the Cajon Pass, along the edge of the Mohave basin, the Cañada de las Uvas, head of Tulare plains, Estero plain, San Miguel Mission, Rio Salinas, Rio Pajaro, San José or Santa Clara valley, thence along the proposed road to San Francisco. By reference to the accompanying map of Lieut. Parke, United States topographical engineers, and the general map of Lieut. Williamson, topographical engineers, it will be perceived that this route is the shortest practicable one between the above points. I have personally examined nearly this entire distance, and consider it the most economical route along which the proposed railroad can be built. The distance is just 600 miles by the combined surveys of Lieut. Parke and Lieut. Williamson, shorter by fifty-four miles than Lieut. Williamson's route, and fifty miles shorter than Lieut. Parke's route. The only important points along this route which present any serious obstacles to a favorable location are the Cajon Pass and the Cañada de las Uvas. Through the former I have passed three times, and the latter once, and I am confident that a location can be made through each of these passes with grades less than 100 feet per mile, at reasonable cost. The side slopes are favorable, and no tunnelling may be necessary.

For my views in full upon the merits at the 32d parallel route to San Francisco, I would refer you to a letter addressed to the Hon. Guy M. Bryon, of Texas, February 15, 1858. In that letter I compiled the distance from New York, *via* Faltere and El Paso, to San Francisco at 3,359 miles. This distance includes the route of Lieut. Parke from Los Angeles, *via* the coast route, to San Francisco. By adopting the route above described, from Fort Yuma to San Francisco, as the

most direct and practicable, this distance becomes fifty miles shorter, viz, 3,309 miles.

The route which I have above recommended, particularly from San Bernadino through the Cajon and Cañada de las Uvas, has not, that I am aware of, been specifically reported upon or recommended by the War Department, under whose supervision the most reliable explorations and reconnaissances have been made in relation to the practicability of a Pacific railroad; but on a careful review of my observations while connected with these surveys under Captain Whipple and Lieut. Parke, in 1853–'54–'55, I am satisfied, in my own mind, that this is the most practicable and most economical and direct route.

I am, sir, respectfully, your obedient servant,

ALBERT H. CAMPBELL.

R. V. RICHARDSON, Esq.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 429.

NATHAN WHITMAN.

[To accompany Bill H. R. No. 652.]

APRIL 13, 1860.

Mr. FENTON, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Nathan Whitman, report:

That they have examined the evidence in the case, from which it appears that the petitioner enlisted in Captain Jenny's company of volunteers from Vermont, in September, 1814, to go to the defence of Plattsburg, in New York; that he was in the battle of Plattsburg on the 11th of September, 1814, and was an orderly sergeant in his company. That after the battle General Macomb desired Captain Jenny to remain, with as many of his men as he could prevail on to stay, to aid in the search for arms, ammunition and provision, secreted by the enemy. That the petitioner remained and crossed the Saranac, where they found a large quantity of stores secreted in trenches or ditches. That while engaged in raising a heavy box out of one of these trenches, the petitioner was in the trench and was lifting one end of the box, those at the other end lost their hold, and the box was dropped, he being unable to hold up his end, falling upon and crushing his ankle, and fastening him until it was removed. He was then about twenty-one years old; he is now over sixty-five. The injury has been permanent, and increasing in severity as age increased, till he is now entirely deprived of the use of his limb. He has suffered great pain and inconvenience from it for over forty years.

All these facts are sworn to by Captain Jenny, who has known petitioner ever since the accident, and was present and saw the accident when it happened; also by Otis Capren, who was a private in same company, was knowing to the facts, and has known him ever since. His inability is fully proven by Drs. O. G. Dyer and William Gile, respectable physicians in Leicester, Addison county, Vermont, who testify that he has received an injury at sometime dislocating and fracturing the ankle, which not being properly reduced, would, of necessity, increase in pain and difficulty as age increased. Captain Jenny also swears that the petitioner was an orderly sergeant in his company.

The petitioner testifies that the reason he did not apply for a pension sooner was, that he did not know that volunteers were entitled to pensions under government. His application was rejected at the Pension office, on the ground that no record of such a company as Captain Jenny's can be found on the rolls. They did, however, so far recognize his claim as to grant him bounty land warrant No. 44400.

Your committee unanimously concur in reporting a bill granting him a pension at twenty-one dollars per month, the pay of orderly sergeant, from February 9, 1859, his petition to Congress having been filed February 9, 1858.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 430.

HERMAN J. EHLE.

[To accompany Bill H. R. No. 653.]

APRIL 13, 1860.

Mr. FENTON, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Herman J. Ehle, report:

That having examined the proofs in the case, it appears that the petitioner, now aged sixty-five years, served as first lieutenant in the company of riflemen commanded by Captain William Jenkins, in the 138th regiment, and 11th brigade of the militia of the State of New York, commanded by Lieutenant Colonel George H. Nellis, in the war with Great Britain in 1812. He was ordered into service of the United States and did join his company of riflemen on the 7th day of September, 1814, and marched with said company to Sackett's Harbor, and continued in actual service of the United States until the 29th of September, 1814; that while in camp, in the discharge of his duty, being exposed to the cold and wet, was, on or about the 20th of September, 1814, taken sick with dysentery and the piles so severely that his life was despaired of. That on or about the 29th of September, 1814, the surgeon of the regiment, Dr. Joshua Webster, ordered petitioner to be sent home, and he was accordingly discharged, sick and disabled, and sent home in a covered wagon. Petitioner was a well man previous to said sickness; that the said sickness was not the effect of any vicious conduct on his part, and arose solely from great exposure. Since that time his health has been constantly impaired, he is wholly incapable of performing manual labor, and is greatly afflicted with frequent attacks of the same disease. The petitioner has received a bounty land warrant from the department; that the reason he did not apply sooner was, that he did not know till recently of the act of Congress granting pensions to the militia, passed April 24, 1816. He petitions to receive the benefit of the act passed April 24, 1816, and to be placed on the pension rolls at the pay of a first lieutenant. His application to the Pension office for a pension was rejected on the ground "that the muster-roll of his company upon which his name is found furnishes no evidence of disability alleged to have been incurred whilst in the service."

These facts are substantiated by the petitioner's own affidavit, and the affidavit of George F. Dankle, a citizen of Montgomery county, New York, who testifies that he is sixty-six years old, and has known the petitioner for upwards of fifty years; that he belonged to the same regiment, and did military duty with him since 1809, and is knowing to all the facts set forth above. Also, by the affidavit of Pythagoras Wetwere, aged sixty, of the village of Conajoharie, New York, who was a private in the same regiment, on the said march to Sackett's Harbor, and corroborates the said statement. The fact of present disability and the probability that it was incurred as alleged, is certified to by Joseph White, surgeon of the 1st regiment of rifles, New York, and Simon Snow, late surgeon of the 19th regiment, 6th brigade of cavalry, of New York. The respectability of the surgeons is certified to by David Spraker, of Canajoharie, and the certificate of the adjutant general of New York is attached, that each were surgeons, or had been, of the aforesaid regiments, New York militia.

Your committee concur in reporting the accompanying bill.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 431.

THOMAS BOOTH.

[To accompany Bill H. R. No. 654.]

APRIL 13, 1860.

MR. FENTON, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Thomas Boothe having carefully examined the papers and proofs in the case, report:

It appears from petitioner's own affidavit that he is 69 years of age, and a resident of the county of Chautauque, State of New York; and that he enlisted in the United States service as a private June 12, 1812, in a company commanded by Asa Morgan, in the war with Great Britain; and that while in the line of his duty he received a wound a short distance above the ankle-bone by a musket-ball from the enemy, while actually engaged in the battle of Williamsburg, in Lower Canada. The ball partially fractured the bone and lodged in his leg; the ball was afterward extracted. The veins of his leg have become varicose, and the tendons so contracted that he cannot straighten his leg, which causes him to halt in his gait. After receiving the wound he remained in the army, though unable to perform field duty. He was employed mostly in the recruiting service, and was honorably discharged. That he failed to receive the surgeon's certificate for a pension, when he left the army, from the surgeon's neglect of duty or other cause unknown to petitioner. That very few of the wounded whom it was supposed might recover received such certificates. And that the petitioner has been one-half disabled ever since he received the wound. There is no direct corroborating evidence of his wound. John A. Holcomb, now 81 years old, a resident of Crawford county, Pennsylvania, swears that he knew petitioner intimately in 1813; that he saw him just previous to his crossing the St. Lawrence, about the 11th of November, 1813; that he was then an able-bodied man, and sound in both his legs; and when he saw him after the battle of Williamsburg he was lame in his right leg; and said Booth told him, and he also learned from others, that he had been wounded by a musket-ball from the enemy; and he verily believes petitioner was so wounded. Elizabeth A. Couvers, aged 60 years, a resident of

Warren county, Pennsylvania, testifies that she knew said Booth in 1813; that about the 1st of December, 1813, he came to her father's, Dr. Leonard Bacon, and that he was lame with a wound in his leg, which he said he received by a shot from the enemy at the battle of Williamsburg, on the 11th of November, 1813; her father gave him medical aid for said wound. William Booth, a resident of Hanover, Chautauque county, New York, swears that he knew petitioner in 1813; that he came to his residence in Rensselaer county, New York, in 1813; was then in the service of the United States as a recruiting officer; that he saw his warrant and furlough for that purpose; that he had a bad wound on his leg a little above the ankle, apparently made by a ball from a gun; that he was disabled by the wound four or five weeks; as soon as he got partially over it he left home and went to Hartford, Connecticut, where he was in said service, and there stationed until 1817; that he was always from that time lame by reason of his wound, and has been acquainted with him ever since; he has always been lame since, and often so lame as to entirely disable him from performing any labor; the fact of his present disability, and the appearance of the wound being occasioned by a gun-shot, is certified by A. R. Avery and D. G. Colville, physicians in good standing in said county of Chautauque; his application to the Pension office was rejected on the ground "that the rolls of his company furnish no evidence of his ever having been wounded in the service, and that he had failed to produce the evidence of a commissioned officer or two comrades who saw the wound inflicted or were in a position to know the fact; and that the rolls show that petitioner was in the service and performed the duties of a soldier for more than three years after the alleged disability.

The petitioner asks for a pension of $4 (half pay) per month, dating from the time of the disability. As this would be contrary to the established rules of this committee, and in view of the nature of his service and the severity of his wound, your committee recommend a bill granting him a pension for life at $4 per month, dating from the 2d day of September, 1858, being the time his application and proofs were made to the department.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 432.

PRENTIS CHAMPLAIN.

[To accompany Bill H. R. No. 655.]

APRIL 13, 1860.

Mr. FENTON, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Prentis Champlain, report:

That they have examined the proofs in the case, from which it appears that the petitioner enlisted as a volunteer private in the company commanded by George Weaver, in the regiment commanded by Colonel Brough, Ohio volunteers, fourth regiment, in the war with Mexico; that he enlisted on the first Monday in April, 1847, and served till the 15th day of July, 1848, when he was honorably discharged; that while in said service of the United States, in the line of his duty, in August, 1847, at Matamoras, in Mexico, he was attacked with diarrhœa, from which he partially recovered, and that afterwards, on or about the 10th day of September, 1847, while on the March from Vera Cruz to Puebla, and while in said service, and in the line of his duty, for fourteen successive nights he was exposed, without cover or shelter of any kind, and without a sufficient allowance of wholesome food, to constant rains; that in consequence of such exposure, sometime in September he was again seized with dysentery or diarrhœa, which became chronic; that not being totally disabled, he was not discharged, but detached on lighter service, and on horseback, in which service he continued till the close of the war; that said chronic diarrhœa has continued ever since. It appears that in consequence of such exposure he was also seized with rheumatism, which, not being very severe at first, though always painful, did not prevent his continuing in service, but has become also chronic; and that in consequence of said diseases combined, caused by such exposure, he has been, ever since his discharge, unable to pursue his occupation, which was that of farmer. He has resided and now resides in the county of Loraine, State of Ohio. The fact of his disability, of his laboring under chronic diarrhœa and chronic rheumatism, that he is wholly disabled, is certified to by Charles D. Townshend and S. G. Wilmot, physicians in good standing in said county of Loraine. They also certify that they knew him before and after his services in Mexico; that he was a hearty, robust

man before, and that since he has been totally disabled, as before stated. The certificates, also, of two reputable witnesses are produced, who swear that the petitioner is a man of good moral character, and that his diseases were not produced by any excesses of his own. The facts in relation to his disease and exposure in Mexico are fully sustained by the affidavit of Captain George W. Weaver, who states that during all those fourteen days and nights the troops were supplied only with bacon full of worms, and muddy water. The character of Captain Weaver for truth and veracity is fully confirmed by the certificate of Hon. John Sherman, representative from the thirteenth congressional district of Ohio, who states that he is well acquainted with him, and that "he is entitled to full credit." The application of petitioner for pension was rejected by the Commissioner on the ground "that the surgeon of the regiment finds no entry of any attendance upon him when first attacked with rheumatism." The petitioner swears that this disease came on gradually, and before he called medical aid he had been transferred to a company of horse artillery in another regiment, and was attended by the physician of an Illinois regiment. Your committee concur in reporting a bill granting him a pension.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 433.

ESTHER COLE.

APRIL 13, 1860.—Ordered to be printed.

Mr. HALL, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Esther Cole, report:

That they have examined the proofs in the case, from which it appears that Samuel Cole, her husband, a soldier of 1812, was discharged from the service before he incurred or received any disability, but that on his way home he incurred the disease which caused his death.

Your committee are of the opinion that the case is wholly outside of the law, without precedent or authority, and that they cannot recommend pensions where the disability was not received *in* the service and in the line of duty. They therefore ask to be discharged from the further consideration of the subject.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 434.

LIEUTENANT DANIEL STARR—CHILDREN OF.

APRIL 13, 1860.—Ordered to be printed.

Mr. POTTER, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of the children of Lieutenant Daniel Starr, of the revolutionary navy, report:

That the evidence in the case is conclusive as to the service of the petitioners' father in the revolutionary navy for a period of three years; that he was a lieutenant on board of the United States ship "Trumbull," and was mortally wounded on the 2d of June, 1780, in the engagement between the "Trumbull" and the British letter-of-marque ship "Wasp," and died on the 5th of June, 1780; that he was married to Lucy Douglass January 5, 1764, who remained his widow until her death, in 1832, during which widowhood she never received any pension, nor does it appear that she ever applied for relief during her lifetime, although she might have done so under the resolution of Congress of August 24, 1780.

It would seem that the widow survived her husband more than fifty years, and as she permitted so long a time to elapse without asserting her claim, your committee are of opinion that the children are not now entitled to the relief which was not asked by their mother. They therefore ask leave to report the following resolution:

Resolved, That the prayer of the petitioners ought not to be granted.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 435.

OBEDIAH HARDESTY—HEIRS OF.

APRIL 13, 1860.—Ordered to be printed.

Mr. POTTER, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of the heirs of Obediah Hardesty, submit the following report:

That no evidence of any kind is furnished to support the petition; and your committee therefore submit the following resolution:

Resolved, That the prayer of the petitioners ought not to be granted.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 436.

SAMUEL REMICK.

APRIL 18, 1860.—Ordered to be printed.

Mr. DELANO, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of Samuel Remick for a pension, report:

That whoever is to be regarded as the applicant for relief in this case, whether Samuel Remick, or his widow, Sarah Remick, in either case, we think there is no occasion for the interference of Congress. As an application on behalf of Samuel Remick, we think there is no case proved for an increase of pension. As an application of Sarah Remick, the same is not entertained; inasmuch as her husband having died in receipt of a pension, she is clearly entitled to a pension or annuity for life from the Pension office; and, upon an application there for the proper allowance, we doubt not that it will be given.

The committee therefore ask to be discharged from the further consideration of the case.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 437.

ABIGAIL HUNTLEY AND OTHERS.

APRIL 13, 1860.—Ordered to be printed.

Mr. DELANO, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of Abigail Huntley and other widows of revolutionary soldiers, report:

That there is no law existing under which the petitioners can receive an increase of pension, and therefore recommend the adoption of the following resolution:

Resolved, That the prayer of petitioners ought not to be granted.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 438.

ELIZA M. ARCHER.

APRIL 13, 1860.—Ordered to be printed.

Mr. CURRY, from the Committee on Naval Affairs, made the following

REPORT.

The Committee on Naval Affairs, to whom was referred the petition of Eliza M. Archer, widow of Richard C. Archer, a late purser in the navy, asking an allowance of half the monthly pay to which her husband would have been entitled, report:

That the claimant in this petition is the widow of Richard C. Archer, who was a pursur in the United States navy, and died on the 24th of June, 1824. On the 3d of March, 1837, an act of Congress was passed, by which the widow of any officer who had died, or might thereafter die, was entitled to the half-monthly pay to which the deceased would have been entitled under the acts regulating the pay of the navy, in force on the first day of January, A. D. 1835, to commence from the time of the death of such officer.

The Pension office decided that pursers were included under the designation of "officers" in the act of March 3, 1837, and that pursers' widows were entitled to half pay under that act.

On the 23d of August, 1842, the act of 3d of March, 1837, allowing this half pay was repealed. Petitioner, however, excuses her *laches*, or failure to apply for its benefits, by the allegation that she was entirely ignorant of the existence of the act of 3d of March, 1837, until quite recently, many years after its repeal.

As Purser Archer died in 1824, thirteen years before the enactment of the law granting half pay to widows of officers in the navy, and could not, therefore, have been entitled to any pay on the first of January, 1835, the period fixed in the act of 1837 from which to estimate the pay to which the officer could have been entitled, it would be a construction of the law neither sensible nor just to make it relate back to a period so far antecedent to its passage. Your committee are unanimously of the opinion that the claim of Mrs. Eliza M. Archer should not be allowed.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 439.

ALPHONSE BARBOT.

APRIL 13, 1860.—Ordered to be printed.

Mr. CURRY, from the Committee on Naval Affairs, made the following

REPORT.

The Committee on Naval Affairs, to whom was referred the memorial of Alphonse Barbot, a lieutenant in the United States navy, praying for the reimbursement of an amount of money wrongfully charged against him on the books of the Treasury Department, report:

That Lieutenant Barbot alleges that in the year 1847 he was a passed midshipman in the navy, doing duty on board of the United States schooner "Tampico," commanded by Lieutenant John P. Gillis; that in consequence of the detachment of Lieutenant Gillis, caused by sickness, he became, as the next officer in rank on board, the commanding and disbursing officer, (there being no purser on board;) that, upon the settlement of his accounts with the proper accounting officer, he became, upon the final settlement, deficient to the amount of two hundred and twenty-four dollars, which deficiency was caused by the miscarriage of certain vouchers for disbursements, which were forwarded by the regular and usual mail, but never reached their destination; that he then forwarded by Julius S. Bobier, a passed midshipman, returning to Washington city, duplicate vouchers, directed to his agents in Washington city, but they were unfortunately lost by Mr. Bobier. In consequence of the vouchers not being received, the accounting officer did not allow him the proper credit on the settlement of his accounts. The deficiency has been paid to the Treasury Department, in compliance with the directions of that office.

A letter from the Fourth Auditor's office of the Treasury Department, dated 28th January, 1859, states that the books of that office exhibit no indebtedness on the part of Lieutenant Barbot to the government.

A sworn statement of Julius S. Bobier is to this effect: That in or about the year 1848 Lieutenant Barbot placed in his hands, (as he was coming on direct to Washington,) on board the United States ship North Carolina, a package, directed to Messrs. Mecklin & Winder, attorneys and claim agents in the city of Washington, "*said* to contain certain vouchers of said Barbot for disbursements made by him whilst he was in command of the United States steamer Tampico. During part of the time that vessel was one of the Gulf squadron,

commanded by Commodore M. C. Perry, during the Mexican war." The deposition further states that Mr. Bobier does not know whether said package, containing said vouchers, was ever delivered to the said Mecklin & Winder, or whether they were lost, but that he is under the impression that they were lost.

Without expressing any opinion on the abstract merits of this case, if sustained by satisfactory evidence, your committee cannot, with the insufficient evidence before them, report a favorable bill.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 440.

ASSISTANT ENGINEERS IN THE NAVY.

APRIL 13, 1860.—Ordered to be printed.

Mr. MORSE, from the Committee on Naval Affairs, made the following

REPORT.

The Committee on Naval Affairs, to whom was referred the petition of certain first and second assistant engineers in the navy of the United States for retrospective pay, corresponding with their retroactive assigned rank, report as follows:

The petitioners belong to a class of officers who are entitled to examination and promotion after a certain length of actual service, and if the period prescribed expires while they are absent upon this service, the law provides that if afterwards examined and passed, their rank shall bear even date with that of their class who may have been examined and promoted in their absence. These petitioners are nine in number; two of them, being second assistant engineers, do not come within the category named, none of their class having been examined while they were absent. It appears, upon inquiry at the department, that of the other seven only one had served the prescribed period, which is five years, and this one had only passed the period by one month when examined; the others had served: one less than three years, two less than four, and the others less than five; so that they are not entitled to examination, and consequent promotion, but were examined by the indulgence of the department.

But the petitioners ask that all assistant engineers who have been, or may hereafter be, promoted shall receive the increased pay appertaining to such promotion from the date of their rank instead of the time when they receive their commissions.

It appears upon examination that there has been heretofore a conflicting practice at the department upon this subject, and the matter has been passed upon in various forms by the following Attorneys General, viz: Mr. Wirt in 1826, Mr. Legaré in 1842, Mr. Clifford in 1847, and Mr. Cushing in 1853, all agreeing that retroactive rank does not draw after it retrospective pay. But the petitioners allege that both the Navy and War Departments give this retrospective pay. It seems, however, that special cases are excepted, embracing passed assistant surgeons, first and second assistant engineers, and passed midshipmen, and the committee think that such exceptions are properly made. The committee report adversely to the prayer of the petitioners.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 441.

DAVID SAYRES.

APRIL 13, 1860.—Ordered to be printed.

Mr. BUFFINTON, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the petition of David Sayres, praying to be allowed bounty land for his services during the late war with Mexico, report:

That the petitioner alleges that he was employed as interpreter and clerk in the commissary department in the late war with Mexico, and acted in that capacity from a time shortly after the occupation of the city of Mexico by the American army, in 1847, till the close of the war, in 1848, and was regularly discharged in New Orleans in June of the last-mentioned year.

Conceiving himself to be entitled to bounty land under the act of March 3, 1855, he presented his claim to the Commissioner of Pensions, who rejected it, and on an appeal to the Secretary of the Interior the decision of the Commissioner of Pensions was affirmed. He submits that his claim for bounty land, if not within the letter, is within the spirit of the acts of Congress granting bounty lands for military services, and asks a special act for his relief.

The committee can see no reason why bounty land should be granted to the petitioner in preference to numerous others who performed similar services, and whose cases are not embraced within the general laws. If the general laws are not comprehensive enough to embrace the class of service performed by the petitioner, and if it is right and expedient to grant bounty lands for that kind of service, the proper remedy would be by general and not special legislation.

Your committee, therefore, report adversely to the prayer of the petition.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 442.

HUGH FERGUSON.

APRIL 13, 1860.—Ordered to be printed.

Mr. BUFFINTON, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the petition of Hugh Ferguson, of Clermont county, Ohio, praying for an additional allowance of bounty land, report:

That the petitioner represents that he served three tours in the war of 1812, amounting to nearly eight months' service, for which he has received one hundred and twenty acres of land. He submits that, inasmuch as one hundred and sixty acres are granted for fourteen days' service, the general laws operate unequally; and asks that said laws be so amended as to grant one hundred and sixty acres of land for every fourteen days' service rendered by the same soldier.

If the petitioner has only received one hundred and twenty acres of land he is entitled to forty acres more, and can obtain the same by a proper application to the Pension office without further legislation on the subject.

Your committee, not concurring with the views of the petitioner in reference to the proposed amendment of the general laws, ask to be discharged from the further consideration of the subject.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 443.

COOLIE TRADE.

[To accompany Bill H. R. No. 657]

APRIL 16, 1860.

Mr. ELIOT, from the Committee on Commerce, made the following

REPORT.

The committee to whom was referred the following resolution, to wit: "Resolved, That the Committee on Commerce be directed to inquire into the expediency of prohibiting by law all American vessels from engaging in the coolie trade, or from transporting apprentices, so called, to the West Indies, or other parts of the world," have given to the same their attention, and report:

That about twenty-one years ago, soon after the emancipation of the slaves in the West Indian colonies, an emigration commenced of laboring men and women in British ships from the East Indian possessions of Great Britain to the port of British Guiana, on the coast of South America. The earliest attempt to introduce these Indian laborers or coolies was not fortunate in its results. Disease and quick mortality followed the emigrant. The labor acquired by the planter was of much value. The Indian coolie was found to possess some useful qualities. But the unaccustomed climate and unusual life which surrounded and pressed upon him in South America, and the injudicious or the unkind treatment which he encountered, induced terrible forms of disease, accompanied by acute suffering and certain death.

Knowledge of the facts attending this emigration was speedily carried to England, and an excitement was aroused at once among different men, some of whom had advocated and some of whom had doubted the wisdom of West Indian emancipation. Great indignation was expressed against those who had permitted and all who had engaged in the Guiana importations of labor from East India, and the expressions of discontent and of indignant remonstrance were so determined that immediate action was had by the government at India tending to stop at once further emigration. But the value of emigrant labor had been felt upon the plantations at Guiana, and efforts were soon made in various quarters to bring about a renewal of the emigration, under such regulations and restrictions as should be found necessary to protect the life and health of the emigrant. The earnest action of the Indian government was had, to the end that the emigrant should be transported with safety and in comfort, and that such con-

stant oversight should be exercised in his behalf, at his new home, as would, so far as practicable, preserve his health. In 1842 an order in council was procured, by virtue of which that emigration was renewed. Great efforts appear to have been made to promote the welfare of the Indian laborer. Regulations were adopted restricting the number of passengers to be carried by the emigrant ships, and providing such accommodations for them upon the passage as would advance their comfort. The terms of the contract to be made for labor, the compensation to be paid for service, the duration of the service, and its character, were required to be agreed upon and explained to the understanding of the laborer.

The expenses of transportation were a subject of charge upon the treasury of the colony, but with the right reserved of calling upon the party into whose service the emigrant subsequently entered to repay such exp nses. It was required that the emigrant, before he engaged himself to leave his home, should be made to know where he was going, and to understand the character and conditions of the proposed engagement.

This emigration has continued to Guiana and to Trinidad. But the Mauritius has been the favorite point to which this emigration has been directed. At the end of the time for which the contracts of service were made, the Indian coolies were, by the terms of the agreement, sent back to India without cost to themselves. And although the amount of wages was small, not exceeding four dollars a month, with clothing and board in addition, yet, at the end of the five years' apprenticeship or term of service, these simple men carried home such sums of money as made them comparatively independent, and induced others to seek their fortunes in like way.

The importation of East Indian coolies into the single port of Mauritius, between 1843 and 1857, is indicated in the following table:

1843,	males,	18,105 ;	females,	888.
1844,	do	44,454 ;	do	5,047.
1850,	do	51,240 ;	do	12,572.
1855,	do	96,142 ;	do	25,131.
1856,	do	100,541 ;	do	28,245.
1857,	do	102,821 ;	do	31,466.

The effect of so large introduction of this foreign labor upon the plantations of this people has been great, and the increase in the product of sugar, from 28,000 tons in 1838 to about 118,000 tons in 1856, shows that the care of the government at India and in Mauritius had been extended over this emigration and over the Indian coolies, who were the subjects of it. The great increase in the emigration of females indicates an increasing willingnesss on the part of the emigrants themselves to remain permanently in the new homes which they had sought.

The committee have deemed it to be their duty, under the general terms of the resolution referred to them, to present these facts concerning the Indian emigration of coolies which has been mainly carried on in British vessels and under the immediate supervision of the

government in India. But the resolution does not call for any recommendation by the committee of legislative action respecting this branch of the coolie emigration. Legitimate emigration under proper instructions, when the parties seeking employment know what they want and make their own bargains, and receive the stipulated compensation, and retain and exercise the right of selecting their own employers, and of returning to their own homes at the end of their term of service, will generally regulate itself. It has not been the policy of the American government to place obstacles in the way of intelligent and voluntary emigration.

But the "Chinese coolie trade," as it is generally called, and as it has been conducted from the beginning, is not a "trade" between emigrant and shipmaster. The coolie is seldom a party to any contract, but the subject of a contract made between parties seeking to derive, through deception and by fraud, unlawful gain by the barter, without his volition, of his skill and labor for a consideration not known to him and not intended to benefit him. From the moment of his capture the coolie is a slave. He is the subject, first, of the meanest deception, and then of a servitude in no respect practically different from that which the confessed African slave trade binds upon its victim. That is the trade concerning which your committee have sought for information. The attention of the Christian world has been recently drawn to it by atrocities committed and by sufferings endured, which it is difficult to describe by any language that would not appropriately describe the African slave trade in its most odious form.

There has been, since the settlement of California, a Chinese emigration which has been voluntary and profitable mutually to the contracting parties. The discovery of gold in Australia divided this emigration, which has since tended to both places at the option of the emigrants themselves. There may have been deception practiced in this business. Where gain is the object of pursuit, the controlling mind will shape the contract, and may secure undue advantage. When ignorance bargains with knowledge, a profit secured may be fraudulent, which would be fair between parties of equal intelligence. Your committee have found it to be out of their power to procure satisfactory statistical information respecting this emigration, or such facts connected with it as would seem to require at the present time the interference of Congress.

The laws of Congress now in force "regulating the carriage of passengers in merchant vessels" would apply to all American vessels engaged in such emigration to California. But the provisions of those laws do not apply to the carriage of passengers in American vessels from a foreign port to another foreign port. The laws at present in force upon this subject are those of February 22, 1847, and March 3, 1849. The intent of these laws was apparently to protect American ports from diseases which might be engendered by the arrival of passenger ships unduly crowded. By the provisions of the first law "a master of a vessel taking on board any greater number of passengers than in the foregoing proportion with intent to transport the same from the United States to any foreign port or place, or from any foreign port or place to the United States, is guilty," &c.

By the terms of the act of March 3, 1849, "all vessels bound from any port in the United States to any port or place in the Pacific ocean or its tributaries, or from any such port or place to any port in the United States on the Atlantic or its tributaries, shall be subject to the provisions of all the laws now in force relating to the carriage of passengers in merchant vessels." There is reason to believe that the provisions of law now prohibiting the carriage of an undue number of passengers from foreign ports into ports of the United States, and regulating the transportation so as in other respects to secure the comfort and the health of passengers, should be extended so as to apply to American vessels carrying passengers directly into ports other than those of the United States. Such provision will be found in the bill accompanying this report.

It remains for your committee now to describe the "coolie trade" properly so called; to trace its history so far as they have been able to ascertain the facts respecting it; to describe its iniquities, and to recommend the passage of such an act as will effectually prohibit its conduct by American masters in the merchant vessels of the United States.

This trade is of recent origin. It seems to have commenced about the time when the laws against the prosecution of the African slave trade were enforced with the greatest stringency, and resting in theory upon the voluntary action of the emigrants themselves, it seemed at first an innocent and worthy source of mercantile profit. Several merchants of unquestioned honor and of high integrity of character in the commercial cities on our Atlantic seaboard engaged without hesitation and without suspicion of wrong in the shipment of Asiatic coolies from Chinese ports to Cuba and to the Brazils, and to other places upon the South American coast. Among the merchants who had thus, to some extent, connected themselves with this trade were two gentlemen who were members of the government of the Boston Board of Trade. But before the public attention had been drawn to this subject in this country they had ascertained so much of the true character of the trade as to induce their immediate abandonment of it at large personal loss. At their request a committee of members of the Board of Trade was appointed to receive their statements concerning this business. The Hon. Alexander H. Rice, the present representative in Congress from Boston, was chairman of that committee. The following is the closing paragraph of the report:

"It will thus be seen that, late in the year 1854, Messrs. Sampson & Tappan made inquiries respecting the coolie trade at points where it was conducted; that the result of these inquiries was satisfactory to their minds; that they subsequently contracted with the government of Brazil for delivering at Rio de Janeiro two thousand Chinese colonists, who should be liable, on arrival, to have their contracts for five years' labor each transferred to Brazilian farmers and landlords; that, at the expiration of their term of service, land should be given them on the frontier, or sold at low price in other localities, as an inducement to remain, or that the government should facilitate the return of those who might wish to go back to China; that this contract with the Brazilian government was guaranteed by a forfeiture of two thou-

sand pounds sterling if not executed; that subsequently to making this contract, Messrs. Sampson & Tappan had reason to believe they had been misinformed respecting the character of the business in which they had embarked, and that they made further investigations by correspondence and conversation with the United States commissioner to China, and by correspondence with their agent in China; that the result of this new investigation was to change their views of the character of the enterprise, and that they sent positive instructions to their agent to abandon the business at whatever cost, and to divert the ships intended for this business to other branches of trade; that the contract referred to was not fulfilled; and it appears from the dates of the correspondence that the business was abandoned by Messrs. Sampson & Tappan some months before any public discussion respecting the character of the coolie trade had taken place in this country, and before it had been brought into disrepute in commercial circles generally; and furthermore, that this abandonment of contract was made at the risk of heavy forfeiture, probably at the sacrifice of large pecuniary returns."

It is a mortifying fact that up to the present time American shipmasters and northern owners are found willing to connect themselves with a trade in many of its features as barbarous as the African slave trade. In one respect it is more abhorrent to an honorable mind than that trade which the civilized world condemns as piracy. The captured African is not made to believe that he is changing his condition for the better; but the Asiatic coolie is entrapped and deceived by false pretences of promised gain into the power of men who, having cheated him of freedom, enslave him for gain.

In a despatch from William H. Robertson, acting consul of the United States, dated Havana, July 27, 1855, Mr. Robertson communicates to the Secretary of State, Mr. Marcy, the intelligence of the arrival of the American ship Hound, owned in Stonington, Connecticut. This vessel, with a register of $713\frac{28}{95}$ tons, imported from Macao 230 coolies, called "passengers." The consignees were the "Colonization Company," represented by Pereda, Machado & Co. These gentlemen protested against the conduct of Captain Peck, the master of the Hound, in not having brought in his vessel 400 "passengers" who had been "prepared to embark" in that ship. Acting upon the humane advice of Dr. Parker, then the United States commissioner at China, Captain Peck refused to receive more than 230 "colonists" as passengers. Mr. Robertson states in his despatch that "Captain Peck expresses himself as heartily ashamed of being concerned in such a trade, and states that, from information obtained from the *passengers* on the passage as to the manner of their being obtained in their country, and subsequently of the manner of their being disposed of after their arrival here" (at Havana,) "he cannot but consider this trade as bad, if not worse, than anything he has read or heard of the African slave trade."

Early and persistent remonstrance against this traffic in Chinese coolies was made by the honorable Peter Parker, the accomplished commissioner and minister plenipotentiary of the United States to China, after his arrival at Hong Kong, in December, 1855, and in

January 1856, the following "public notification" was issued by him:

"The undersigned, commissioner and minister plenipotentiary of the United States of America to China, in accordance with the instructions of his government in relation to the so called-coolie trade, 'publicly to discountenance the same on his arrival in China,' issues this public notification to all whom it may concern:

"Whereas the history of the traffic in Chinese coolies, as carried on in vessels of the United States and under other flags during the past few years, is replete with illegalities, immoralities, and revolting and inhuman atrocities, strongly resembling those of the African slave trade in former years, some of them exceeding the horrors of the 'middle passage,' women and children having been bought for the purpose, and others not merely seduced under false pretences, ignorant of their destination, but some forcibly abducted and violently borne to countries unknown to them, never to return; and not only by the ancient statutes of the Chinese empire, but by recent proclamation, the imperial government has prohibited the same, threatening with death the 'brokers, hardened miscreants, who impose upon the people and seduce them to their destruction;' and

"Whereas the correspondence of the imperial government with this legation has evinced its strong disapproval of the traffic, describing it in terms which place it upon a level with the slave trade itself; and admitting the trade proper, *per se*, it has been carried on in *localities where foreign trade* is not permitted by *any treaties*, and is therefore illegal; and the foreign name has been rendered odious by this traffic, hundreds and thousands of lives having been inhumanly sacrificed, not, perhaps, intentionally, but nevertheless they have been sacrificed, and in some instances in a manner than which nothing more revolting can be conceived, whilst others who have survived have scarcely been more furtunate; and

"Whereas the amicable relations of the two governments are being jeopardized, and honorable and lawful commerce imperilled, and even the lives of those engaged in the inhuman pursuit have been exposed to the vengeance of those whose relations and friends have been bought, kidnapped, or grossly deceived in the progress of the coolie trade:

"The undersigned therefore calls upon all citizens of the United States to desist from this irregular and immoral traffic, and makes known to all whom it may concern the high disapprobation thereof of the government of the United States, and forewarns all who may hereafter engage therein that they will not only forfeit the protection of their government while so doing, in whatever consequences they may be involved, but furthermore render themselves liable to the heavy penalties to which the traffic, if as hitherto in some instances conducted, may expose them.

"This notification respects the 'coolie trade,' in contradistinction to the voluntary emigration of Chinese adventurers; between these there exists a wide difference.

"Regulations for the business of furnishing Chinese labor to countries that may desire the same, and for affording facilities to Chinese

voluntarily disposed to render such service, in providing outfit and passsage and means, and freedom to return at their option, may be a subject for future treaty stipulation, or government arrangement on the part of the western natives and China. The United States consuls will be instructed to convey copies of this notification to the proper Chinese authorities at the five ports.

"Given under my hand and seal of office this 10th day of January, 1856.

"PETER PARKER."

This action of Dr. Parker was in accordance with the wishes and pursuant to the instructions of the government of the United States, as will be apparent from the following letter of Dr. Parker to Messrs. Sampson & Tappan:

"LEGATION OF THE UNITED STATES,
"*Shanghai, September* 8, 1856.

"DEAR SIRS: I am in receipt of your favor of the 24th June, 1856, enclosing a copy of a letter received from Mr. Collings, who represents the house of Boird, Le Cocq & Co., in London, through whom your contract to import two thousand coolies into Brazil was made with the Brazilian minister on the part of his government, requesting a certified copy of the instructions of the United States under which I acted in issuing my notification of the 8th January last, and the original and translations of the proclamation alluded to in that paper. I have to inform you that compliance with the former part of the request is impossible, as my instructions were received *in person* and not in writing. In a letter of instructions, dated Washington, April 27, 1855, the honorable Secretary of State observed: 'Many topics not alluded to in these instructions have been considered in our several conversations, and I have expressed to you the views of this government upon them.' The topic of the Chinese coolie trade was one of these. The circumstances under which I learned the views of the government upon the subject I will briefly state. A letter from your Mr. Sampson, dated September 3, 1855, informed me that he, or your firm, might have occasion to address me in my official capacity on the subject of the coolie trade after my return to China. That I might know how my government would have me act in such an event, I embraced an early opportunity of presenting the subject to the Secretary of State. It was at the Department of State, and Governor Marcy, Mr. Cushing, the Attorney General, and Mr. R. M. McLane, being present, this subject was broached. I was struck with the subject, which was considered 'one degree worse than the slave trade,' and I was told by the Secretary of State that 'under given circumstances it would be my duty publicly to discountenance it.' Before reaching China I learned the particulars of the awful tragedy on board the coolie ship 'Waverley'—more revolting than the horrors of the black hole in Calcutta. On my arrival I deemed it my duty, under my instructions, to look into the subject, little aware that it was of so serious a character as I found it, and in the only way practicable to discountenance the traffic, so far as the United States flag

is concerned. My action upon the occasion was immediately transmitted to Washington, and if I had misunderstood or misinterpreted the views of government ample time has elasped for my error to have been pointed out, which has not been done.

"In addressing the Secretary of State upon the subject, (despatch No. 1, dated January 14, 1856,) I had occasion to remark: 'When I came to the investigation of this traffic I had no adequate conception of its enormity, and the strong terms in which I have described it are fully sustained by official documents and the most reliable testimony, (*vide* correspondence upon the subject of emigration from China, presented by command of her Majesty to the House of Commons, 1853, and House of Lords, 1855.') These papers I have not at hand. In them was contained, so far as my memory now serves me, the proclamation particularly referred to in my notification and was translated by Mr. Morrison, interpreter to her Britannic Majesty's consulate at Amoy, and which I think was included in the papers of Dr. Winchester upon the traffic and embraced in the above correspondence. On my return to the south of China I will endeavor to obtain not only the translation, but, if practicable, a copy of the original Chinese from the British consulate at Amoy. In the meantime I beg to enclose a translation of an edict by the governor of Canton—the original Chinese is mislaid or at the south—which also I will attend to on my return thither.

"The mail for this month has already departed, but as a steamer is about leaving for Hong Kong I write thus briefly, with the hope it may reach that place in time for the mail for Europe of the 15th instant.

"I remain, dear sirs, very truly, your friend and servant,

"PETER PARKER.

"Messrs. SAMPSON & TAPPAN, *Boston.*"

The disastrous voyage of the Waverly, to which allusion is made in the preceding letter, is yet too recent to have been forgotten; but it has been followed by others more tragic, which will be referred to hereafter.

The Waverly was an American ship, and sailed from Swatao, an illegal port, even for legal trade, bound to Callao, with four hundred and fifty Chinese coolies on board. On the 25th of October, 1855, she put in at Manilla on account of the death of her master, Captain Wellman. Owing to an unfounded rumor that infectious disease was epidemic in the ship, she was ordered into quarantine, and was then sent to Carito, a distance of about six miles, for "observation," and in order that needful remedies might be applied. The coolies, supposing they had arrived at the end of their voyage, wished to go on shore, and tried to get possession of the boats for that purpose. The acting master fired among them. The crew armed themselves and quickly drove the passengers below and closed up the hatches.

The hatches were opened some twelve or fourteen hours afterwards, and it was found "that nearly three hundred of the unfortunate beings had perished from suffocation." When it was ascertained

that no contagious disease had been on board the ship, she was released from quarantine. The captain said that he had no idea there was not ventilation enough in the between decks to give air to the Chinamen, and was "fearful of being overpowered," and therefore that the hatches were left closed.

Your committee proceed now to state the manner in which this involuntary coolie emigration is conducted. Until the recent treaties with England, Canton was the only Chinese port free to foreign vessels. But within a few years four other ports have been opened, to wit: Amoy, Foo Chow, Ningpo and Shanghai. This was effected by the treaty of peace signed on the 29th of August, 1842, on board the Cornwallis, by Sir Henry Pottinger, on the part of Great Britain, and Ke-ying, Elepoo, and Ninkien, on the part of China. By the terms of this treaty consular officers, under the appointment of foreign powers, were permitted to reside at the five ports to protect the commercial interests of their respective nations, and the island of Hong Kong was ceded to Great Britain. On the 31st of December, 1845, a treaty was ratified between China and the United States, which contained the essential provisions of the treaties with England, and provided for the erection at the five ports of chapels, cemeteries, and hospitals. Permission was given to ships-of-war to visit Chinese ports. Similar treaties have been made between France and the Emperor of China.

From these ports, but chiefly from Amoy, the shipments of coolies were made during the earlier emigration. But as the traffic enlarged itself, and its great profits enticed lawless men to engage in it, the coolie traders have found it more easy to evade the few provisions of law which could be enforced at the legal ports where consuls resided by carrying their vessels to illegal ports and loading them there.

In a despatch from Dr. Parker to Mr. Marcy, dated Macao February 12, 1856, it is said that "the statistics of the coolie trade for 1855, at Swatou, an illegal port, even for the legal trade, are as follows:

	Ships.	Tonnage.	Coolies.
American	5	6,592	3,050
British	3	3,821	1,938
Chilian	1	500	250
Peruvian	3	1,860	1,150
	12	12,773	6,388

The coolies are procured by purchase, and are, in fact, as truly the subject of barter and sale as the negroes upon the coast of Africa. Native Chinese are employed to entice from their homes such as may be persuaded by hope of profit to themselves to leave their friends. These men are employed by "brokers," who themselves deal with the shipmasters or agents. The brokers send their emissaries into all parts of the country in search of men and boys, who are deceived by false pretences to place themselves in the power of men who are remorseless as death. They are sometimes beguiled and sometimes kidnapped. But whether they are obtained by fraud or force, when

once they are in the custody of the broker they are his merchandise. The pretence of contract is sometimes continued, but the disguise imperfectly conceals the fact of slavery. "The men being inveigled to barbarian houses and ships, are publicly sold. When once amongst them, they cannot understand their gibberish, and they are kept in close confinement. They may implore Heaven, and their tears may wet the earth, but their complaints are uttered invain."

A paper published at Canton, in October, 1855, and widely circulated, describes this trade as carried on at Macao, a peninsula near the mouth of the Canton river, in China, which has been for about two hundred and seventy-four years in the possession of the Portuguese.

"There are already in existence five places vulgarly called "Chütsze Kwan," or "pig-pens." * * * * * *

"Each barracoon procures its men from swindlers, who obtain them through deception. The price they pay for each head is eight dollars. They frequently purchase and keep them in readiness, so that one of these barraccons may have several tens of men and another several hundreds. They wait to embark together, and all are shipped to foreign countries, where they are resold for perhaps over a hundred dollars a head." * * * * * * *

"But how were these men seduced? Plainly at the outset, because they are often taken in by swindlers, who would address them as follows: 'I have a relative who keeps a carpenter-shop at Macao. By my recommending you to his shop you will receive, in the first year, a few moce per month for your wages. Your apprenticeship will expire at the end of three years. In that case, your wages monthly will be four dollars.' Upon seeing a neat and slender fellow, he would say: 'I should like to recommend you to a foreign house as a servant.' Meeting with the stout and strong, he would say: 'There are men who would furnish you with a capital, and I should like to go with you to California.' Finding his victim wealthy, talented, and young, he would accost him and say: 'I should like to accompany you to see the sights, and take you with me to a refreshment room.' Thus he watches opportunities, and adapts himself to circumstances, employing, moreover, numerous plans and schemes which cannot be discovered and stated, to seduce his victims. When once the simpletons credit his fair speeches, they are then forthwith accompanied by him through Tih Hing Kie, (Howquas street,) in Canton, where they step on board a Macao fast boat that serves as a jail for criminals. On the next day they are hurried down to Macao, where, upon landing, they are taken to the barracoons; in these they are taught what to say; and as they pass muster or examination, they are not permitted to cry aloud. * * * * * *

"Though some who reached this hell on earth against their own inclinations, yet they could not help it. For this reason some undertook to climb our walls, but were recaptured by foreign devils, and were accordingly flogged to death before the rest as a warning. In one of these barracoons some have even gone so far as to commit suicide by hanging themselves. I have known of ten such cases."

On the 14th April, 1856, the governor of Canton issued the follow-

ing proclamation against this trade, which also alludes to the manner in which the business was then conducted.

Proclamation of his excellency Pih-Kwei, the governor of Canton.

A stringent prohibition of kidnapping men and holding them for a ransom, and of enticing men to go to foreign countries, in order to tranquillize the people.

Whereas there are those who seize and kidnap young boys and girls, and conceal them in dark secluded recesses to extort a ransom, and for the sake of gain, seduce persons to go to foreign countries never to return; such intriguing traitors are bent exclusively on gain, regardless of the inhuman injuries they inflict on others, in utter contempt of the law. On examining and reading over the old records, I am so exasperated that the hair upon my head stands erect.

Upon examination I find that these outrages are for the most part perpetrated by the rascals of the Shuntih, Tung-Kwang, and Heang Shan, who generally go out of the jurisdiction to which they belong to diffuse their venom; those whom they kidnap they closely conceal in caverns among the hills, and, if destitute of money, put them to death. Among them are some who escape, but they are unable to give the names, surnames, and residence of the kidnappers. As to those who are enticed to go to foreign countries, they are in the first instance tempted by the hope of gain, but in the end they are put under restraint like buffaloes and horses, till death gives them repose.

Of these devices the ignorant people are not aware, and multitudes are involved in calamity.

Now the monstrous sprites of Canton have just been suppresssd, it is necessary that everything should be properly attended to as respects the future.

I, the governor, protect the people as my children, and hate wicked men as I do my enemies; therefore, besides issuing my orders to the prefects and magistrates within my jurisdiction secretly to employ guides and search and find them out, and then examine and punish them, I also issue this special proclamation, commanding both the militia and people of this province that whenever it happens that you meet with vagabonds from other places of suspicious aspect, from three to five in a group, with sharp swords about their persons, immediately give notice of the fact, and, with united strength, arrest them. I, the governor, after trial and conviction, will reward you liberally, according to the number arrested, and will take the vagabonds themselves and punish them to the utmost extent of the law as a warning to others, and thus exterminate this class of rascals, so injurious to the people. Let each tremblingly obey; no opposition. Special edict.

3d month, 10th day, (April 14, 1856.)

At nearly the same time the government of Peru attempted to control the importation of Asiatic coolies into Callao, and published the following paper, from which the mode of conducting this trade appears:

[Translation.]

LIMA, *March* 5, 1856.

Considering—

First. That the introduction of Asiatic colonists, (*colonos Asiaticos*,) besides its unsuitableness to the country, on account of their being of a degraded race, is degenerating into a species of slave trade, which cannot continue without outraging humanity or violating the principle of freedom and equality proclaimed by the government;

Second. That the contracts entered into are infractions of the article 1635 of the civil code, where they are not for the benefit of the colonists, but only for the benefit of the speculators; that, on account of the large amount paid by the master, (patron,) the colonists compromise themselve to serve for a long and fixed time masters with whom they have not contracted, and whose service they are prohibited to change;

Third. That the excessive number of those persons shipped in small vessels, and the scarcity and bad quality of the provisions, have caused the death of at least a third portion of the colonists, and the remainder to arrive at the port with dangerous diseases;

Fourth. That, in some cases, the rigor employed on board the vessels, as a measure consequent to the deception and violence with which these criminal speculations are made, has occasioned repeated catastrophes, which it is necessary to prevent;

Fifth. That the government should not authorize an abuse as repugnant as it is offensive to morality and the law, from which only the speculators in the traffic obtain profit;

It is *resolved:*

ARTICLE 1. That four months from this date the introduction of Asiatic colonists (*colonos Asiaticos*) by contract, in the cruel and violent manner with which it has been effected to this day, shall be prohibited.

ART. 2. The masters and officers of vessels arriving with Chinese shall prove, in the ports of the republic, their having embarked voluntarily; and, in case it is proved that they have been taken by force or deception, and carried in numbers for which the vessel is not capable, they shall be brought to trial for the crime, and shall pay for the damages and injuries they may cause.

ART. 3. The Chinese, who may henceforward enter the territory of the republic may freely exercise their trade, or may hire themselves to any employer, according to the existing laws, and they shall fulfil only those contracts entered into with defined persons, they being responsible only for the advance of wages which they themselves may have received.

Let it be communicated and published.

Signed by his excellency.

Countersigned: MAR.

Mr. Williams, the secretary and interpreter of the United States legation, translated the following "argument respecting kidnapping and selling pigs to foreign vessels," which was forwarded by Dr. Parker to the State Department in January, 1857.

On argument respecting kidnapping and selling pigs to foreign vessels.

Among the most distressing things for man is to leave his friends, (as in pursuit of a livelihood,) and to die away from them, still (in such a case) if he becomes diseased and sick, and medicines are unavailing to cure his ailments, he can calmly close his eyes in death, his relatives sorrowing, as they do, for his loss, will yet in time lay aside their mourning.

But what is ten thousand times more distressing than this is what I have myself personally heard and seen, is being kidnapped and sold on board foreign ships—it is a thing that excites the bitterest hatred and grief.

Recently a set of reckless villains have devised a cunning scheme, going around from hamlet to village, in cities and fairs, where they kidnap silly people and sell them on board foreign vessels, in which they are taken to foreign regions, there to toil forever in bitter service. This is vulgarly called selling pigs, and, in truth, it differs in nothing from the sale of swine.

These miscreants go prowling about everywhere, and when they see a poor and sorry man they embrace the occasion to beguile and deceive him, as the circumstances of the case suggest; they will tell him, for instance: It is very distressing to see you live so beggarly and wretched, and I have a way to relieve you which I can recommend; there are foreign ships about going to Australia, to Foo Chow, to Shanghai, or elsewhere, where there is great demand for workmen. You need to be at no expense for passage or outfit, and if there is any profit they promise to divide it with you. The poor man hearing these crafty and delusive words invariably falls in with the proposition, and is urged and cajoled to go at once on board to see the captain. He knows not that once there (for this man is in league with the foreigner,) he will be straightway confined in the ship's hold and the hatches locked on him. Then, though he had wings, he could not escape, he can only uselessly regret his fate. While his body is thus confined in the hold of the ship, like a man in a dark hellish dungeon, his thoughts recur to his father and mother, whose toilsome care in nurturing him has been, as it were, incontinently thrown into the deep. The love and kindness between husband and wife is thus vilely sundered for no purpose, and children, relatives, and friends can no more be seen in this life.

If a man falls sick on board, and his malady is not cured in four or five days, he is tied up with a hempen rope and cast into the sea or on the beach. While I was passing once in a boat I saw several men thus tied up, who were imploring the gods to deliver them and save their lives.

Really I could not bear to hear them, and wished to go to their rescue; but my boatmen strongly urged me not to do so, alleging that the foreigners had pistols in their hands, and I should only get injured if I tried.

Those who live to reach the foreign country, there to toil in bitter service; if cold, they have only a shirt to cover them; if hungry, only

vile rice for food; if thirsty, only water from the hills to drink; and at night they sleep in forests and thickets. Every day they are hurried to carry earth or plough the soil, or made to transport stones, or dig the mines without cessation. If one happens to idly rest, the foreigner cudgels him at his pleasure, and thus he drags out a toilsome existence, seeking for death in vain. Moreover, there are dreadful wild beasts and venomous serpents which pursue men, and awfully furious storms of rain, all of which grievously injure and weaken the body. How sad, how distressing to endure all these calamities in consequence of the deception of one hour!

Now, any man who has received a body from his progenitors, and was born in civilized and affluent China, can, if he be diligent and thrifty and do not fail in his duty, support himself and live on the fruits of his labor. Why should he be so foolish as to be cajoled by rascals and sold into foreign parts, separated from his own flesh and blood while alive, and then become a vagabond devil in unknown regions when he is dead?

I have a nephew who has been to those countries where he saw more than twenty thousand Chinese who had been thus deceived, but he contrived to escape after many adventures, and has told all this to me.

I on my part presume to let others know it, in hopes that benevolent and kind gentlemen will circulate this information in villages, so that everybody may be aware of these schemes and not fall into the traps.

Perhaps they will petition the authorities to rigorously punish such fellows, that others be warned from these bad practices, and the lives of our countrymen be saved. This is what I earnestly hope.

As for those truculent villains who act so cruelly, they no longer retain any trace of heavenly rectitude, nor even of human feeling.

Even if they escape punishment in this world, they certainly will suffer the destruction of hades. Let them, therefore, straightway reform their conduct, nor imagine there is no retribution for such conduct.

I am aware that I am not an elegant writer, but I hope the readers of this will not cast it away because of its rude style.

A respectful address to all who love virtue.

To be posted everywhere for the people to see it. Have respect for printed paper, [*i. e.*, do not tear it down.]

The blocks are kept in a shop in Tsiang-lan street, in Canton, where kind persons can get as many copies struck off as they wish.

True translation.

S. WELLS WILLIAMS,
Secretary and Interpreter to United States Legation.

These proclamations and papers were preceded and have been followed by others from other officers and parties in China, setting forth in strong language the character, tendency, and effect of this trade in Asiatic men. The facts which come to us from China, the documents published by American and English officials and residents, the consular action there and consular despatches to the home government,

compel us to believe that no language can depict too strongly the fearful character of this slave trade of the nineteenth century.

In a memorial of Chincha shipmasters to the right honorable the lords of the privy council of trade, it is written: "All the American shipmasters at the Chinchas, from the northern as well as the southern States, declared they never saw or heard of slavery approaching that of the middle island of the Chinchas in misery."

The Earl of Clarendon, in a letter to Mr. Sullivan, says: "Her Majesty's government learns with deep regret that by British agency and under the British flag these Chinese laborers have been brought to the Chincha islands, and placed in a state of slavery more horrible than any yet recorded."

The attention of the government of the United States to the coolie trade was again invoked by Hon. William B. Reed, United States minister, &c., &c., to China, in an official letter dated Macao, January 13, 1858. In this letter Mr. Reed refers to the case of the American ship Kate Hooper, of Baltimore, which sailed from Macao on the 14th of October, 1857, for Havana, with 650 coolies on board. The registered tonnage of the ship was 1,488$\frac{78}{95}$ tons. At Angier the ship was reported in distress. The master stated the cause of trouble to be that the sight of land near Gaspar straits so excited the coolies that they rose in mutiny. They were driven below and kept there. This was about three degrees south of the equator. The coolies tried to burst open the hatches and set fire to the ship. Five of them were killed, several others wounded, and twenty of them closely confined. The master of the ship, Captain Jackson, addressed a letter to the American consul at Batavia, dated Angier, November 13, 1857, giving his account of the "mutiny" and calling for aid. A copy of this letter was forwarded to Mr. Reed, and in his reply, dated December 14, 1857, he says: "I am trying to devise some mode by which I can stop at the clearing ports this vile traffic, which is contrary to the laws of China. In order to do so, I shall need precise statements of facts, and if you can furnish me with one in connexion with the Kate Hooper I shall be glad. The papers here make out the case worse than you do, bad as you report it. Let me have the truth."

In his letter of January 13, 1858, Mr. Reed refers to another case of the American ship "Challenge," which sailed from Swatou for Havana with coolies, and was reported as having put into Singapore, in distress, having infectious disease on board, and having lost many "passengers." "Such," writes Mr. Reed, "is the almost uniform fate of vessels thus employed. Sickness, mutiny, and death, in some form of misery, and the number of laborers which reaches the place of destination though large is, after all, but a remnant. * * * * The voyages are rarely less than four months, with every extreme of temperature and every variety of exposure." Mr. Reed then refers to the action of his predecessors, and to the proclamation of Mr. Parker, which has been hereinbefore mentioned, assenting fully to the earnest disapproval by Mr. Parker of this traffic, and stating that the proclamation, unfortified by any sanction or penalty, had had a good effect. Mr. Reed did not consider himself authorized to direct consuls to withold clearances when the local authorities fur-

nished the required certificates. "At Swatou, being an illegal port, there is no consul, no clearance, no semblance of law. It is said there is a Spanish consular agent there, an American by birth, his especial duty being to supervise this very traffic." Upon full consideration, Mr. Reed says that he deemed it best to attempt to arrest this traffic by a "warning, if not threat, which it will be for the government at home to carry into effect." He then recites the provisions of the fourth section of the act of Congress, of 20th April, 1818, and comments with much force upon the terms of the law and upon the possibility of holding them applicable to this trade. "At all events," he states, "I have felt myself authorized to try to arrest this pernicious traffic by a warning that all parties concerned, especially the owner and master, may expose themselves to the penalties of the law. With this view, in the case of the Flora Temple, now in these roads awaiting a cargo of coolies for Havana, and of the 'Wandering Jew,' said to be loading at Shanghai, I directed the consuls to advise the Spanish authorities and the masters of the ships that the traffic is, in my judgment, contrary to the laws of the United States." * * * * * * "The answer of the Spanish consul general on the subject is a peremptory refusal. He receives a fee of five dollars for each coolie shipped. My power of intervention here is thus exhausted." * * * * * * "There can be no doubt that this trade is utterly repugnant to the laws of China." * * * * On the 30th of November the intendant at Shanghai issued a notification, renewing a prohibition at that port." * * * * * * * * * * * "Should the interpretation which I have put upon the act of Congress not be sustained, and the prohibitions of the Chinese authorities be disregarded, then I hope the subject will attract the immediate attention of the President and Congress, so that if they agree with me in my opinion of this trade, effective legislation may be adopted. The remedy might be to extend the act of 1818 expressly to the case of Chinese coolies; or if still more stringent measures are thought expedient, to apply the provisions of the act of March 3, 1819, to the trade, and enable the President to authorize the seizure of coolie vessels at sea, and on capture here, the restoration of the Chinese to their native country. The American vessels engaged in this trade are first-class clipper ships, which must anchor in deep water, and cannot evade cruisers. The Flora Temple, at this moment in my sight in the Macao roads, is within musket shot of the Minnesota, and there her living cargo will be shipped." * * * * * * * * * * "In making these suggestions, I have assumed that the government at home will agree with me in deeming the trade a mischievous one. My duty is done in bringing it to their attention, and in expressing my own opinion."

* * * * * * * *

"Viewing it in any light, as a matter of humanity and policy, I deem it my duty to condemn this traffic, and to beg the early attention of government to its repression, so far at least as it is conducted in American vessels."

The last voyage of the Flora Temple, which was loaded with her living cargo, in the sight of Mr. Reed, at Macao, in January, 1858,

fitly and fearfully exposes the inhumanity of this vile traffic. The tragic story of her destruction has burdened, recently, the columns of our newspaper press, and the following account is extracted from a letter dated United States flag ship Powhatan, harbor of Hong Kong, December 12, 1859:

"A case recently occurred of which a friend has furnished me some particulars in addition to those given in a paper here by an individual concerned in the traffic, and on board the ship at the time of the disaster. It is a tale of horror never exceeded by anything in the records of the ocean. The *Flora Temple*, as I am ashamed to confess, was an *American* vessel, but chartered by English residents here, who are fully responsible for all which followed.

"The Flora Temple was as fine a merchant ship as ever entered the sea of China, as is asserted by competent judges. Lying off Macao, all arrangements were made to secure a full cargo of coolies by the means I have mentioned. They were cheated, inveigled, or stolen, and either taken directly to the ship, or else confined in the barracoons in Macao till the ship was ready to sail for Havana, the crew numbering fifty, and the coolies *eight hundred and fifty*. Leaving Macao, October 8, Saturday, the deceived and stolen coolies soon learnt their cruel destiny, and as all injured and betrayed men would do, resolved to attempt to avert it, however desperate the chances. They had no arms, and therefore had to struggle with every disadvantage in the effort of recovering their liberty. A party collected on the deck on Tuesday morning, before the shores of their own loved country had forever disappeared from their eyes, and rushing upon the guard, a single individual, a fight ensued in which the guard was killed. In the meantime the captain, Johnson, hearing the noise, hurried upon deck with his revolver, and his brother and an Englishman interested in the kidnapping with him, both also armed with revolvers, who discharged half a dozen rounds into the coolies, who were thus driven back, and defeated in their attempt to recover their liberty. How many were killed and wounded it is for the interests of the kidnappers not to tell, and the *dead* also tell no tales.

"Nor can they tell the cruel treatment they received before they were driven to this desperate act—treatment, as they well knew, which was only a foretaste of what awaited them. Nor do the officers of the ship or the Englishman on board, who was trading in stolen human flesh, inform the world of the course they took towards these miserable, deceived, and helpless men, when they were overpowered and defeated in their most justifiable attempt to assert their liberty. But a friend informs me that they were driven below deck, and confined there like felons, almost without light and air, and where, crowded together, so large a number in so small a space, the greater part must inevitably have perished in the long middle passage. Think of 850 human beings, all full grown men, pressed into this contracted, rayless, airless dungeon, in which they were to be deported from China to Havana, all the long way over the China sea, the Indian ocean, and the Atlantic.

"On the following Friday, October 14, while sailing over the China sea, at half past 7 o'clock in the evening, the vessel struck upon

a reef which is not laid down in the charts, a gale of wind in the meantime blowing, and the sea running high. Every effort was made to save the ship by the officers and crew; the poor coolies, battened down beneath the deck, being allowed no chance to aid in saving the ship or themselves. Although the yards were 'braced around,' and the ship 'hove aback,' she struck first slightly, and then, soon after, several times with a tremendous crash, the breakers running alongside very high. Pieces of her timbers and planking floated up on her port side, and after some more heavy bumps she remained apparently immovable. The water rapidly increased in the hold till it reached the 'between-deck,' where the 850 coolies were confined. While this was going on, indeed almost immediately after the ship first struck, the officers and crew very naturally became afraid of the coolies for the treatment they had received, and the captain ordered the boats to be lowered, not to save the coolies in whole or in part, but to preserve himself and crew. These boats, even under favorable circumstances, were not more than sufficient for the officers and crew, showing that no provision had been made for the poor coolies in case of disaster. The boats passed safely through the breakers, leaving the ship almost without motion, all her masts standing, her back broken, and the sea making a clear breach over her starboard quarter. When the boats left the ship and steered away without making one effort to save the 850 coolies, or allowing them to do anything to save themselves, with their last look towards the ship they saw that the coolies had escaped from their prison through doors which the concussion had made for them, and stood clustering together, helpless and despairing, upon the decks, and gazing upon the abyss which was opening its jaws to receive them. My friend assures me that he knows these poor creatures were completely imprisoned all the night these terrible occurrences were going on, the hatches being 'battened down,' and made as secure as a jail door under lock and bars.

"The ship was 300 miles from land when it struck, and after *fourteen days* of toil and struggle, one of the boats only succeeded in reaching Towron in Cochin-China; the three other boats were never heard of. Here the French fleet was lying; and the admiral at once received the captain and his boat's crew on board one of his ships, and besides, at request, sent one of his vessels to the fatal scene of the disaster, where some of the wreck was to be seen; but not a *single coolie!* Every one of the *eight hundred and fifty* had perished! Whether the British coolie traffic is any better than the African slave trade in its palmiest days, every one may decide. Nor is this a solitary case; hundreds could be adduced of equal horror and barbarity, if not ending in the same catastrophe. Think of it for a moment, and a moment is as much as human nature can well endure. *Eight hundred and fifty human beings*, having parents, wives, children, brothers and sisters, and all the human sensibilities and sympathies like ourselves, decoyed, deceived, or stolen, forced on board a ship, shot down like dogs when they attempted to escape from their floating prison, fastened down between decks while the ship was striking upon the rocks and going to pieces, and all in the dark night, which their miserable quarters made still darker, half drowned in water, which was rapidly

gaining about their half-naked bodies, and half-drowned in the ship before they sunk in the deep, while the dismal winds howled over them a melancholy funeral dirge even before the funeral; at length, the ship utterly deserted of officers and crew, and the doors of the horrible prison of the coolies thrown open by the violence of the surges which the humanity of the officers would not open, these miserable beings rush upon deck, and stand in compact crowds gazing upon the fearful scene. But help there was none; hope there was none; every boat had been taken; every officer and seaman had managed to save himself, and abandoned to certain death the eight hundred and fifty innocent men they had decoyed or stolen! There they stood, gazing, shrieking, helpless, till the ship broke, and the surge rolled over them, and their voices were hushed forever. But 'the sea shall give up its dead,' and witnesses shall come up revealing all the villanies and horrors of the English coolie traffic."

The cases brought by your committee to the attention of Congress of American ships filled on American account, preclude us from condemning the foreign trade while our own American trade is conducted unrebuked by law. At present "the beam" is in our own eye.

On the 7th of December, 1857, Mr. Reed, in a note addressed to S. B. Rawle, esq., United States consul at Macao, inquired of him whether and how frequently he had been called upon as consul to give his official attestation to contracts for the shipment of Chinese laborers. In his reply, dated December 10, Mr. William A. Macy, deputy consul, states that no certificate was required from the American consulate when coolies were carried in an American vessel, "but it has been stated that each of the coolies must have a passport from the Spanish consul residing here, and the captain a certificate of compliance with the Spanish regulations." "Two vessels," Mr. Macy adds, "have loaded this year for the Havanas, with these Chinese laborers, and in the absence of any authority to restrain them, they have been simply warned of the consequences as laid down in the decree of Dr. Parker on this subject, and required to furnish evidence that they were not violating the general passenger act." * * * "I trust some steps may be taken to restrain American vessels from engaging in the business hereafter."

From the commencement of this trade until the present time, the Representatives of our government at China, co-operating, as far as practicable, with the official agents of that government, have earnestly striven by warning, proclamation, remonstrance and threat, to prevent American vessels from engaging in it. But their efforts have been ineffectual. By Dr. Parker's proclamation, some who had not before known what manner of trade it was, were induced to abandon it. It has, however, grown up rapidly into a mammoth slave trade, abhorrent to humanity, and defiant of law, human and divine. When the Flora Temple was in the Roads awaiting her cargo of coolie merchandise, appeals were made, by the direction of Mr. Reed, to the Spanish consul general and to Captain Cole, master of the ship. But they were made in vain. Mr. Macy, in his official note to Mr. Reed dated 8th January, 1858, says: "Having exhausted the resources at present in our power, I do not see that there remains any-

thing further to be done until either the courts at home decide the question authoritatively, or until it shall please Congress to pass a definite act prohibiting or limiting this traffic, at once nefarious and dangerous. The difficulty of treating with the matter here, is greatly enhanced by the fact that the contracts for vessels are made in the United States, and the masters feel themselves quite unable to turn back after their arrival in so distant a port."

In his reply to the remonstrance of Mr. Rawle, the consul of the United States, Nicasio Cariete y Moral, consul general of Spain, uses the following language: "Allow me, sir, to say that it does not belong to me to ascertain whether the American ship owners and masters, in chartering their vessels, infringe the laws of their country or not; they must answer to their own government in case of any infraction, and take upon themselves all the consequences thereof; but these must never recoil upon those Spaniards who, in good faith, have made a contract as formal and as clear in every country of the world, as is the chartering of a ship."

Captain John M. Cole, master of the Flora Temple, in his reply to Mr. Macy, says, under date of January 7, 1858: "My instructions from the owners of the ship Flora Temple, direct me to convey passengers from this port to Havana. I see nothing to justify me in acting in disobedience to their orders."

Early in the month of January, 1858, the American ship "Wandering Jew" was at Shanghai, about to take in a cargo of coolies for passage to Cuba. Efforts had been previously made by Mr. Reed to prevent this emigration. An earnest remonstrance by "See, Intendant of the Soo, Sung, and Tae Circuit," was addressed to William Knapp, jr., esq., United States vice-consul at Shanghai. Mr. Knapp replied to this communication from the United States consulate by letter to "See, &c., &c.," dated 16th December, 1857, and in the course of his letter, he says: "On yesterday I summoned him" (the master of the ship) "to appear before me, and after a close examination into the matter, I find he has no intention to take coolies from here to Havana, but to take Chinese passengers from Woosung to Amoy! He is ready and willing to give me a guarantee or bond to that effect, as is also the merchant, Mr. Conolly. I think there is no Chinese law to prevent Chinese subjects from going voluntarily from one part of the empire to another, and I have most respectfully to request that your excellency will order the inspector of customs to give the captain of the Wandering Jew his port clearance, that he may proceed to sea without further delay." On the 23d of December, Mr. Knapp addressed a second letter to his excellency, See, &c., referring to his former communication, which had not been answered, repeating his former statements, that he had clearly examined and found that it was not the intention of the master of the ship or of the British merchant (the charterer) to take Chinese subjects to foreign lands, but to transport passengers from one part of the country to another, and demanding a port clearance. Mr. Knapp says: "I have come to the conclusion that if a port clearance is not granted before four o'clock, I will give the captain his papers and allow him to proceed to sea." Mr. Knapp soon afterwards ceased to be vice-consul of the United

States at Shanghai, and in a letter from Albert L. Freeman, esq., his successor in office, to Mr. Reed, dated Shanghai, January 26, 1858, Mr. Freeman states: "I regret to find that the views entertained by yourself on the subject applying to the case of the American ship 'Wandering Jew,' have not occasioned a more prompt and decisive attempt on the part of my predecessor to put a stop to it." *

* * * "this vessel received her port clearance from the Chinese authorities, on the assurance of Mr. Knapp that he had obtained from the captain and consignees of the ship a guarantee, (amount not stated,) the same to be forfeited in the event of his loading with coolies for the purpose of transporting them to Cuba. This guarantee, if any such existed, is not to be found. Mr. Jenkins knows nothing of such a paper. A day or two after, Mr. Knapp gave the ship her papers, and she dropped down the river to an anchorage outside of Woosung, some twenty miles from this, where she now lies. During the past five or six weeks she has been engaged in loading with coolies. It is currently reported and believed that the delay she has experienced has been caused by the interception of some three hundred coolies by the local authorities ere they were put on board. It having become reported that illegal and unjustifiable means are being taken by the captain and officers of this vessel in order to obtain coolies, such as stealing, kidnapping, and the various forms of false pretences, I shall to-morrow morning go down the river in company with an interpreter, and a mandarin sent by Taoutie, to institute an investigation of the matter; and I shall then convey to the captain a written expression of your views, warning him against this violation of the law, and informing him that should he proceed to sea with coolies on board for the purpose of transporting them to Cuba, there to be held to service or labor, steps will be taken to lay the matter before the law officers of the United States government immediately on his arrival in the United States, to institute a prosecution for a violation of the act of Congress in such case provided." * * *

Mr. Freeman, who seemed to be determined that the truth of these charges against the Wandering Jew should be investigated, attempted, on the 27th of January, to visit that ship, but was prevented by the interference of one of the foreign inspectors at the custom-house, who detained the cutter "Halcyon," which had been placed at Mr. Freeman's disposal. Upon application to his excellency See, a steamer, the Chinese steamer Confucius, was granted to him, and in that vessel he proceeded at once, accompanied by Mr. Jenkins, the interpeter, and the marshal of the United States, to examine this vessel. In the course of the previous night the vessel had dropped from her moorings about five miles down the river, and when the Wandering Jew was reached, her sails were spread and the crew were getting her under way as quickly as possible to proceed to sea. Mr. Freeman made known to the captain the object of his visit, and stated to him that if upon examination it appeared that any coolies were on board who were there "against their own free will and consent," they would be taken out. It was soon apparent that illegal means had been used in procuring the coolies. Many of them stated that a Chinaman in the employ of Mr. Andrew Conolly, the consignee of the vessel, had

promised to give them three dollars, provided they would go on board a foreign ship to work for a few days; others stated that they were to receive three hundred cash, per day, to come to Shanghai to serve as soldiers; others were to form a part of a mandarin retinue. Nearly every one was questioned in regard to the conditions under which he came on board; and but few were found that came on board with any idea of going to a foreign country. Many of the coolies upon being informed that they were to be taken to a foreign country, begged to be allowed to go on shore, as they had wives and families dependent on them. Out of two hundred and thirty-six coolies on board, one hundred and seventeen were found to be there against their own free-will and consent. These men were released, placed on board the Confucius, carried to Shanghai, and delivered to the authorities. The coolies that remained in the ship were made to understand their situation, but desired to continue on board. They were mostly beggars without ties of any kind in China, who preferred to encounter untried dangers in other lands rather than to return to the suffering and starvation that awaited them at home.

Mr. Freeman learned on board the ship that the captain had intended to proceed to Amoy, to complete his charter load, and the captain was notified that if more coolies were placed on board, his papers would be demanded until Mr. Reed could decide upon the proper course to take in the premises. The Wandering Jew sailed down the river without having received any more coolies at Shanghai, but it was believed from intimations made by the master that he intended to fill up his cargo at Amoy and proceed to Cuba.

The consignee of the ship was summoned before the British consul, and fined two hundred dollars. The captain denied having given any bond or guarantee that he would not take coolies from Shanghai at the time his papers were retained.

Mr. Freeman, by an official note dated the 29th of January, 1858, addressed D. B. Robertson, esq., the British consul, stating what had been done in this case, and informing him of the complicity of Mr. Conolly, the British consignee. Mr. Robertson replied by official note dated January 30, expressing great satisfaction with Mr. Freeman's action, and saying, in close: "I have little doubt that our joint endeavors to put a stop to this inhuman traffic will meet with the happiest results and the approbation of our respective government." The Wandering Jew arrived at Amoy on the 3d of February, but it is believed that she left that port without increase of cargo.

The untiring efforts of Mr. Reed, the minister of the United States at China, following with great energy and with evident good-will, the policy pursued by Dr. Parker, entitle him to the grateful thanks of his countrymen. In an official note to the vice-consul at Amoy, dated February 15, 1858, Mr. Reed says: "I am resolute to do all in my power to put an end to this infamous traffic, in this instance, carried on in defiance of all admonition, by a most discreditable combination between an American master and lawless British shippers."

In his official despatch to the honorable Secretary of State, Mr. Cass, bearing date February 26, 1858, Mr. Reed writes as follows:

"To this (the case of the Wandering Jew) I have nothing to add beyond the renewed expression of my opinion that this coolie trade to the West Indies is a traffic of the most pernicious kind, morally, socially, and economically. During the year 1857 upwards of six thousand were shipped from Macao alone to Havana." * * * * "Our ships carry coolies without a chance of return, on a voyage of five months, in every variety of climate, and have no restrictions imposed on them as to numbers or discipline. A large clipper ship, called the Norway, * * * has just arrived at this anchorage, armed and equipped for carrying coolies to Cuba. She is now loaded with coal on government account, and so soon as she discharges this cargo it is understood to be the intention of the master to proceed to Macao or Swaton to take, it is said, two thousand coolies on board."

On February 18, 1858, Mr. Reed had issued a circular to the consuls of the United States at each of the five ports, calling their attention to this traffic in American ships and to the necessity of arresting it. It was the opinion of Mr. Reed that the "contract for labor or service under which the coolie is shipped" was a contract in violation of the laws of the United States. Acting on this opinion, it was not material in law whether the shipment was with or against the consent of the coolie, if on arrival he was to "be disposed of to be held to labor or service." The fact that the coolie was kidnapped or entrapped or seduced, increased the moral guilt of the parties concerned in the traffic. In his circular Mr. Reed describes this trade thus: "It is a trade in which, as revolting to humanity in its processes and results, no respectable American citizen will participate." "It is a trade which endangers the lives of the mariners engaged in it, and, of course, works terrible suffering and mortality among its principal victims, the coolies themselves." Particular instructions are then given to the consuls as to the course to be pursued by them upon ascertaining that American ships were to be loaded with coolies for any foreign port "under contract for labor or service." But the legal opinion of Mr. Reed as to the liability to punishment under existing laws of parties concerned in this trade has been held by the Hon. J. S. Black, Attorney General of the United States, to be erroneous. The following is an extract from Judge Black's letter to the Secretary of State:

ATTORNEY GENERAL'S OFFICE,
Washington, March 11, 1859.

SIR: * * * * I am of opinion that such trade (the coolie trade) does not come within the provisions of the act of Congress prohibiting the slave trade. All the communications of the American commissioner show that the coolie trade is sometimes accompanied by cruel circumstances calling for restraint or prohibition. No remedy seems to be afforded by existing laws. The evil is one which Congress alone can remedy.

I am, respectfully, your obedient servant,

J. S. BLACK.

Hon. LEWIS CASS, *Secretary of State.*

It remains for Congress, therefore, to determine whether the flag of the United States shall continue to encourage and protect a traffic that, by the concurring judgment of our public functionaries abroad, and of the government of China, and of all men unbiased by selfish interests, who have witnessed the conduct of this trade at the Chinese ports or its effect upon the coolie emigrant at his Cuban home, is condemned as unchristian and inhuman, disgraceful to the merchant and the master, oppressive to the ignorant and betrayed laborers, a reproach upon our national honor, and a crime before God as deeply dyed as that piracy which forfeits life when the coasts of Africa supply its victims.

On the tenth of April, eighteen hundred and fifty-eight (April 10, 1858,) Mr. Reed, before leaving Shanghai, again addressed the Department of State in continuation of his previous despatches. In the course of this communication, referring to the coolie trade, Mr. Reed expresses the hope that the course he had taken had tended to increase the odium of the traffic and "to separate from the lawless and defiant men who are yet engaged in it those shippers and merchants who are sensible to public opinion and can be deterred from iniquity by such sensibility alone." He reiterates the views theretofore "earnestly expressed," and hopes that "Congress will make such provision as to give the representative of the United States here some surer weapons of prevention than notifications and protests."

On the 28th of April, Mr. Reed forwarded with his dispatch of that date, to the State Department, further correspondence in relation to the coolie trade. In a letter to him from the vice-consul of the United States at Amoy, Mr. E. Doty, under date of March 17, Mr. Doty refers to a conference he had had with the Taoutai of Amoy, &c., concerning the circular of Mr. Reed, and states that while that official expressed great desire to put a stop to this business, there was "hesitancy on his part to commit himself, arising, as I (he) inferred from allusions, from the fear of doing something which the English may not approve." Mr. Doty says "that he had addressed a note to the British consul in charge, and also an official letter to the Taoutai himself, which was done at the request of that officer, in order, as he signified, that he might thus 'see his way more clear to act by issuing a proclamation or otherwise.' The desire of Mr. Doty was to induce the local authorities publicly to announce that the coolie trade was illegal, and that no port clearance would be granted to vessels engaged in it. Such action, however, should affect vessels of all nations, and it was feared, unless the officers of the British government acted in unison with our own, that the local authorities would act very inefficiently if at all." The letter of Mr. Doty to his excellency Su-to, Taoutai, &c., was dated March 15, suggesting that in case any American vessel should arrive at the port of Amoy for coolies, he (Mr. Doty) should at once notify the collector of the port that he might refuse to the vessel the "grand chop," without which the vessel could not leave the port; and also suggesting that if the local authorities should suppose that any American vessel had coolies on board, they should notify Mr. Doty, who would then, in connexion with the authorities, "examine the vessel and adjudge the case.'

Mr. Doty, on the same day, addressed the British vice-consul in charge, referring to the expressed opinions of our minister, Mr. Reed, and recommending, in order, "if possible, to put an end to this nefarious business," that immediate notice should be given to the local authorities of any intended shipment from any "treaty port," so that the grand chop or port clearance should be withheld; and also that the aid of the consul should be given at once on request of those authorities for the examination of vessels on board of which Chinese subjects were detained against their will. Mr. Doty added that it would be an encouragement to the Taoutai to have the "favorable influence and approbation" of the British vice-consul. The reply to the note of Mr Doty, made by W. Raymond Gingell, esq., British vice-consul in charge, bears date March 18, 1858. It states that "her Majesty's government, as far as in them lies, are determined to redress and punish the many abuses which have been connected with the shipment of Chinese coolies in British vessels, and to this end have her Majesty's consuls been instructed. I have only to add that it will afford me great pleasure to be enabled in any way to co-operate with you."

In his despatch dated at Shanghai, September 1, 1858, addressed to the Secretary of State, Mr. Reed again invites attention to the subject of the traffic in coolies, between China and the West Indies, expressing his fears that unless despatches are then on the way to him containing the views of the government he may be obliged to leave without knowing whether the preventive measures he had adopted would be approved or not. If approved he says: "It is much to be regretted that the knowledge of the fact cannot be communicated to the unscrupulous men who are engaged in this infamous traffic and a new warning be given." If not approved: "It would be gratifying to me to know at least that I was sustained by the government in the view I take of the trade, even though no existing law can be found to apply to it."

Mr. Reed then refers to a communicatton he had received from the consul at Amoy, dated July 19, reporting a decrease in the coolie trade and alluding to embarrassments and difficulties which had attended a recent attempt to load with coolies a large British steamer, the "Cleopatra." But he afterwards adds: "I regret to say later intelligence has reached me that a new impulse has been given to the trade, and that a number of American ships are now in China and more are expected to take large cargoes from Hong Kong and Macao to the Havana. I do not attribute in any way the increase of this business to the sudden stoppage of the passenger trade with California in consequence of the act of the legislature of that State, lately made known here, which will affect a very different description of emigrants. Such as can go thither, able and willing to pay their passage and return, have no resemblance to the wretched coolie who is decoyed and penned up in the barracoons at Macao and is stowed away between the decks of the English and American ships now engaged in the traffic. In the views which I have expressed as to the coolie trade to the West Indies, I am conscious of no other impulse than that of ordinary sympathy with human suffering. There is an invariable

law as to the fate of a large number of these poor creatures on their way from the east to the west—disease, suicide, or death from barbarous treatment. As certain is their doom, when they arrive, irredeemable slavery under the form of freedom. In its ultimate results I believe this Asiatic slave trade is as bad if not worse than the African slave trade ever was. The African may assimilate and is cared for. The Asiatic is kept isolated so long as in numbers he is weak, and when the numbers become great, the isolation still continuing, there comes a certain and fatal struggle, in which the Asiatic as the weakest falls. It has been so in Java, in Luzon, in Borneo. So before long will it be in Cuba. All that I have hoped for is that some means shall be taken to prevent American ships from being used in this traffic."

Soon after the date of this letter it was manifest that the coolie traffic was becoming more organized. The Spanish government had interfered to prevent the coolie shipments to Cuba. It was hoped that such interference would contribute much to its effectual restraint. But this hope was short lived. On the 24th of September, 1858, Gideon Nye, jr., esq., deputy consul of the United States at Macao, in an official note of that date to Mr. Reed, states as follows: "I have now the honor to acquaint your excellency with a complete reversal of the policy of the Spanish authorities * * * * the last mail having brought a despatch to the consul general of Spain rescinding the former order for the suppression of coolie shipments to the Island of Cuba. As my informant saw the last as well as the former dispatch there can be no doubt of the existence of orders which seem so contradictory. The coolie question therefore enters upon a new phase in respect to Cuba, and it remains for me to await further developments in observance of your instructions."

Before leaving China on his return to the United States, Mr. Reed wrote to the Secretary of State on the 5th of November, 1858, enclosing a copy of a letter of Mr. Nye, and communicating the intelligence that the Havana coolie trade was being reopened under new orders from the Spanish government. Mr. Reed adds that "M. de Montigny, the French consul at this port, (Shanghai,) informs me of the intention of the French government to organize an extensive scheme of Chinese emigration to Algiers and the West India colonies. On this painful subject I have nothing further do say."

A letter written from Hong Kong, and dated December 12, 1859, says:

"The coolie trade has lost none of its activity or horrors. The slave trade itself on the coasts of Africa is not more atrocious, while all the horrors of the 'middle passage' belong to a coolie ship as well as to an African slaver, and at the same time that 'middle passage' embraces the China sea, the Indian ocean, and the Atlantic, instead of the Atlantic only. The great centres of the traffic are Amoy, a port about two hundred miles north of Hong Kong, and Macao, the old Portuguese town, twenty-five miles distant, on the Canton river, where barracoons are erected, and dealers have their residence, who make their arrangements with pirates and others to secure coolies by promises, however false, if they can, or by violence, if that is neces-

sary. Fair promises are made in abundance, tempting to these poor starving people, but promises made only to be broken, by which great numbers are decoyed and then forced into these barracoons, and thus detained, unable to communicate with their friends or the authorities, while others are seized while asleep in their junks by night, or quietly occupied in their fields or gardens, or other humble avocations, and with hands and feet tied are hurried off to the barracoons where they are imprisoned till the ship is ready, to which they are carried by night or stealthily by day, notwithstanding all their entreaties and protestations, and despite all their feeble resistance."

"A letter to the Newark (N. J.) Mercury, dated Hong Kong, December 14, 1859, alludes to recent transactions in the coolie trade, and says:

"One hundred and fifty coolies were liberated on the 8th instant by the authorities. They were found on board of a Macao passage boat, and were about to be taken to Macao, there to be sold to the coolie ship. They were from one of the up-coast ports, and had been 'contracted' with to labor at Macao. Recently at Whampoa the slave depots were surrounded by Major Tan, and the entire slave community were released. At the same place, not long since, fifteen brokers, who had been concerned in stealing natives and selling them into bondage, were captured and beheaded, and their heads exposed on poles; a warning which others will do well to heed. This trade is infamous to a degree, and it is a gratifying fact that the authorities are arousing to the importance of suppressing it."

The following, which is the latest account of a coolie tragedy, is extracted from the newspapers of March 24, 1860. The voyage now so fearfully interrupted is not probably the first voyage of the kind in which the Norway has been engaged. Mr. Reed, in his commuication to the Department of State, dated April 10, 1858, says: "A large ship of two thousand tons, called the Norway, fitted out expressly for this trade at New York, arrived at Hong Kong soon after my circular of the 18th February." Mr. Reed expresses the belief that the threatened penalties and some pecuniary embarrassments in which the parties interested were involved, prevented at that time the intended prosecution of the voyage.

"*Terrible Mutiny of Coolies at sea.—Thirty shot and over ninety wounded.*—We are indebted to the Merchant's News Room for the following: A very serious case of mutiny occurred on board the ship Norway, (of New York,) Capt. Major, on her recent passage from Macao to Havana, which came very near proving disastrously to the officers, passengers, and crew. The Norway sailed from Macao, November 26, with about one thousand coolies on board, and when five days out, at about six o'clock in the evening, the captain being below at the time, a mutiny broke out among the coolies, who set fire to the ship in two places and endeavored to force the hatches. Mr. Stimpson, of Boston, one of the mates, had charge of the deck, and the watch, with the exception of the man at the wheel, was aloft taking in sail, Mr. Stimpson rushed to the hatch and commenced the struggle. The crew from aloft and those below, tried to seize the boats and leave the ship, when the surgeon, an English gentleman, drew

his pistol and threatened to shoot the first man who dared to make that attempt.

"The crew then rallied and went to the assistance of the officers, and a fight ensued, which continued from six in the evening until after daylight the next morning. Thirty of the coolies were killed and more than ninety wounded before the mutiny was quelled. The captain then gave the coolies one hour to deliver up the arms in their possession; if they did not, he threatened to cut away the masts, set fire to the ship, take the boats and provisions and leave them to their fate. The mutineers soon came to terms.

"Capt. Major had his wife and two daughters with him, and also a lady passenger and child, but during the night the lady died of fright, and in the morning the child also died."

It is difficult to obtain satisfactory information as to the extent to which this trade has been carried on from the different ports in China, during the last ten years. At the illegal ports, where the largest shipments are made, no official returns are kept. Nor is it probable that parties engaged in such business, would be careful to disclose the extent of their iniquitous commerce.

The following statement, recently published, was furnished by a gentleman connected with the Chamber of Commerce, in New York, and is believed to be an approximation to the true import into the single port of Cuba:

"Over fifty thousand coolies have been shipped for Cuba alone in the past eight years from China. According to correct sources the following is a list of the vessels which brought Asiatic colonists to the Island of Cuba, from the first importation in 1847, to the 16th of September, 1859, showing the points from whence they were taken, the length of each passage made, number shipped, and the mortality up to the moment of landing. The following is a summary:

Average of vessels and emigrants.

Years.	No of Vessels.	Tonnage.	Chinese. Shipped	Chinese. Landed.	Died.
1847	2	879	612	571	41
1853	15	8,349	5,150	4,307	843
1854	4	2,375	1,750	1,711	39
1855	6	6,544	3,130	2,985	145
1856	15	10,567	6,152	4,968	1,184
1857	28	18,310	10,116	8,547	1,509
1858	33	32,800	16,413	13,385	3,029
1859	13	10,283	6,799	6,027	772
Total	116	90,316	50,123	42,501	7,622

"The above footing, representing the total number shipped, does not include a cargo of 757 landed in Cuba lately, so that the total should be increased to 50,880; and 220 more should be added to the mortality. The total number of deaths, therefore, during the period named, was 7,842. This is a fearful record, and affords sufficient evi-

dence of the inhumanity of the traffic. This does not show the full extent of this deplorable trade. Thousands have been lost between China and foreign ports, whose departure was not recorded.

"In the year 1856, the percentage of loss, according to the above table, was 19.24 per cent., (nearly one in five;) in 1857, 15.50 per cent.; in 1858, 18.45 per cent.; in 1859, 11.35 per cent.

"This list does not embrace the terrible disaster to the ship Flora Temple, last summer."

The treatment of the coolie slave at Cuba depends, of course, upon the character of the employer. But the nominal term of service is for five or eight years. What proportion remains alive after this first term, we have no means of knowing. It has not been pretended that any have returned to their homes; those who have survived the first term of years, have been powerless in the hands of men who would desire to retain them if valuable, and who would not be bound to support them if too enfeebled for work.

Herein the Asiatic coolie is more helpless than the African slave. The slave is claimed by some one as his property. It may be for the interest of an owner to support the health and promote the physical strength of his bondman. He is obliged by law to maintain him in sickness and in old age. The interest of the planter who buys the services of a coolie for a specified time is to get from him, during that time, the maximum amount of labor. At the end of the term, if his labor is wanted, there is no way of escape open against the will of the master; if his labor is not wanted, the law does not enforce support or compel the master to keep or to maintain the useless coolie.

On the 7th of December, 1859, since the commencement of the present session of Congress, a traveller visited Cuba, and his account of what he saw and heard, which has been published within a few weeks, gives us some knowledge of coolie life in Cuba. He writes as follows:

"But the object most revolting, and which continues to haunt my mind, and I think will till I die, was the aspect of the coolies. It seemed to me that human misery could sink no lower. Their doom is vastly worse than that of the slaves. Those wretched Chinese are lured to leave their country, as we were informed, with the promise that for their services for eight years they should be taken without expense to Cuba, be fed and clothed, and receive four dollars a month. Thus at the end of eight years they would have three hundred and eighty-four dollars. This seems like an immense sum to a poor Chinaman, to whom a cent a day is a very respectable competence. Thousands are thus induced to embark; none probably return. They are sold upon their arrival for about four hundred dollars. If their owner can wear them out in eight years, so that they die, he of course has nothing to pay. If he cannot, he sends them to some distant plantation, or sells them again to some one who still claims eight year's service. They are ignorant, debased, and powerless. There is no one to plead their cause, and their doom is sealed. I know not what the sins of Sodom were, but it is safe to say that there could be nothing there exceeding this iniquity." * * * * *

"Seeing a group of several hundred of these wretched coolies,

working in the blazing sun upon a road, I requested our driver to take us through them all. Such a spectacle of misery I never saw, or conceived of, before. Nearly all of them were naked to the waist. They were excessively filthy in person, and their countenances of the most abject debasement and joylessness. Several overseers with limber whips in their hands, were standing beneath the shade of trees, watching them and directing their work. It is said, however, to be unsafe to whip them." * * * * * * *

These facts are recorded by Mr. Abbott, who states, in a brief preface to his book, that he has kept his "eyes and ears open," and has recorded all that he had "seen, heard, and thought," which he believed would interest the public.

It might be hoped that his statements were exaggerated, if we did not know the cruel and mean iniquity in which the traffic begins at China. Such beginning fitly foreshadows its inevitable end.

Your committee are instructed to inquire into the expediency of prohibiting by law all American vessels from engaging in the coolie trade, or from transporting apprentices, so called, to the West Indies or other parts of the world.

They believe it to be within the power of Congress so to legislate, and that the time has fully arrived when such legislation is clearly demanded. Your committee therefore report the accompanying bill.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 444.

SARAH S. STAFFORD.

[To accompany Bill H. R. No. 664.]

APRIL 18, 1860.

Mr. DUEL, from the Committee on Revolutionary Claims, made the following

REPORT.

The Committee on Revolutionary Claims, to whom was referred the memorial of Sarah S. Stafford, for payment of the services of her father, James Bayard Stafford, an officer in the navy of the revolution, report:

The testimony before the committee proves fully that James Bayard Stafford entered the navy at the beginning of the war of independence, was in constant and active service, and in frequent and successful battles until its close; that his ship having been taken by a British man-of-war and recaptured by Commodore John Paul Jones, just before their encounter with the Serapis and Scarborough, he volunteered in the "Bon Homme Richard," where he received a severe sabre cut on the left shoulder, which, from unskilful treatment, reopened after a time, disabling both his arms, and occasioning him great suffering.

Commodore Barry, of the "Alliance," writes that "Lieutenant Stafford served through the whole war. At the request of the secret committee of Congress I sent him with a message to Henry Laurens, esq., a prisoner in the Tower of London. This duty he performed with great fidelity and success." Colonel Laurens, ex-president of Congress, and embassador to Holland to negotiate for aid in our revolutionary struggle, was then a prisoner of war. The secret committee of Congress felt it highly needful to warn him that he must make no terms, accept no compromises into which the British might seek to draw him. This dangerous and difficult communication Commodore Barry offered to Lieutenant Stafford because his patriotism had been proved by his abandonment of lucrative business for the naval service, his courage often tested in action, while his education in England and Ireland gave him a familiarity with localities and manners most necessary for success. Your committee have the affidavits of many aged persons, cognizant of the above facts and of the difficulties of the service. Disguised as an Irish laborer, Lieutenant Stafford walked

from Wexford, in Ireland, to London, save the short water passage from Dublin to Holyhead, and walked back; every step of his enterprise taken at risk of ignominious death. The log-book of an American officer describes the punishment Lieutenant Stafford would probably have suffered if detected, as a seaman and British subject, (which he was, being the son of an officer of the British army,) taken under the American flag: "They were marched upon a floating machine, their bodies, legs, and arms so ironed that they could not bend either; the machine was towed at high water to a gallows erected by government orders; the hangman made the halters fast to the gallows, and left them to die at leisure; that is, by inches, as the tide fell."

It has been urged against the payment of naval service, that the revolutionary Congress promised to pay the army only. This cannot be proved to be other than an omission, and does not entail a like omission upon us. The army were at home; they united in counsel to secure justice. General Washington continually urged their claims upon Congress. The navy were tossed on foreign seas, in double danger of battle and of storm; they were few; unable to meet for counsel; they had no commander-in-chief—no Washington—to maintain their rights with authority, truth, and eloquence. Of the army General Washington says: "If, besides their wages, no further compensation is due—if they are to grow old in poverty and wretchedness, and owe to charity the miserable remnant of a life hitherto spent in honor—then shall I have learned what ingratitude is, and realized a tale which will embitter every moment of my future life."

Your committee believe that the toils, dangers, and sufferings of Lieutenant Stafford in the navy were equal to those of any officer of the army, thus strongly presented by its revered commander.

Again, it has been supposed that the navy were paid by the prizes they captured. The greater number of prizes were necessarily sunk or burned; our ships could not spare men to take them into friendly ports. Yet the cause of freedom reaped the benefit in the losses and the terror occasioned to the enemy. Of the prizes secured, two-thirds the value went to the use of the united colonies; one-third only rewarded the captors, and from this many expenses were to be deducted. Commodore Jones secured one-half to the captors. "What," he writes to Robert Morris, "is the paltry emolument of two-thirds of the prize-money to the finances of this vast continent?" A suggestion vastly more forcible now than then.

Sixty valuable merchantmen were abandoned at once to secure the Serapis for the good of the naval service. This ship, which had just cost the British government $250,000, taken in 1799, was not paid for by France until 1783, and then but $91,000 were received; and it was not until 1837 that this prize-money was finally ordered to be distributed to the captors, of whom scarce any remained to receive this tardy justice. Yet, "for nine days," says Dr. Franklin, "nothing else was talked of in Paris and Versailles" but this victory of the scarce sea-worthy and ill-provided Richard over staunch and well-provided antagonists, while many of her crew, especially those who had lost limbs, neglected and defrauded by unprincipled and rapacious marine agents, begged their bread in foreign ports. Captain Landais,

the French commander of the Alliance, who treacherously fired into the Richard, murdering many of her gallant crew, and risking the loss of the action, was the first man paid by the Congress in 1806.

Lieutenant Stafford was a volunteer in the action of the Richard; his name, therefore, was not on the rolls, and his daughter can receive no prize-money under the law.

All governments pay for secret services, and in proportion to the ability required and hazards encountered. Congress annually appropriates money for secret service, which cannot be supposed to require great patriotism or ability, or to involve any dangers.

In view of the proof of Lieutenant Stafford's naval service throughout the war, of his wound, of the secret service, through all which he received neither payment nor prize-money, and believing that the pathetic description and stern claims of General Washington for the officers of the army apply with equal force to the navy, your committee decide that the prayer of the petitioner, to be paid in accordance with the resolutions of Congress for the revolutionary army, should be granted, and report a bill accordingly.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 445.

MICHIGAN CONTESTED ELECTION.

APRIL 19, 1860.—Laid upon the table, and ordered to be printed.

Mr. GILMER, from the Committee of Elections, made the following

REPORT.

The Committee of Elections, to whom was referred the memorial of William A. Howard, contesting the seat of George B. Cooper as the representative for the first congressional district of Michigan in the 36th Congress, having considered the same and the evidence presented therewith, respectfully submit the following report:

The first district of Michigan is composed of the four counties of Jackson, Livingston, Washtenaw, and Wayne. The election here contested was held on the 2d day of November, 1858. The whole number of votes cast for representative at this election was 26,189.

Of which there was returned as given for George B. Cooper, the sitting member 13,123
For William A. Howard, the contestant..... 13,048
Scattering 18

26,189

Plurality for sitting member, 75 votes, as appears by the returns made to the office of secretary of state of Michigan.

The certificate of election was issued to the sitting member on the 30th of November, 1858. The notice of contest, the answer of sitting member, and the taking of testimony in the case, were in accordance with, and by the authority of, the act of Congress of the 19th of February, 1851.

Upon the testimony so taken, the committee proceeded to hear and determine the case; the amplest opportunity for argument and investigation being allowed to both parties in person, and, so far as they desired, by counsel.

The contestant seeks to overcome and destroy the apparent majority of the sitting member upon several distinct and independent grounds, either of which, if proved, he insists establishes his right to the seat.

The returned member interposed a motion to strike out all the testimony taken by the contestant, for certain alleged informalities and irregularities claimed to appear upon the face of the record. Both parties were fully heard upon this motion, and your committee are of

opinion that no part of the record is irregular, and that it should stand and be considered.

The undersigned proceed to consider the points insisted upon by the contestant in this order:

First. It is insisted that the votes returned for both parties from the 4th ward in the city of Detroit must be deducted from the whole number of votes returned for them, respectively, in the district, for reason of such irregularities and informalities, such clear violations of the statutes of Michigan, and such errors of substance, as to destroy all certainty as to the accuracy of the result, and to make it impossible under the law to give any legal effect to the ballots purporting to have been cast in said ward.

Your committee have carefully considered the evidence upon this branch of the case; and while they would be very unwilling to reject any poll upon mere technicalities, yet, in this case, in the judgment of your committee, the violations of the law were so palpable, and so relate to matters of substance, and produce such uncertainty as to the ballots, (*vide* Tillman and Well's testimony,) that your committee, upon due deliberation, have rejected the poll, and deducted the votes returned for each of the parties in said ward.

Second. It is alleged that the votes returned from the second ward in the city of Detroit should be deducted, for the reason that the polls were in the possession of rioters and prize-fighters throughout the day; and that the obstruction and violence were such as to prevent the legal electors from voting, and so facilitated illegal voting, on the part of those who had no right to vote at all, that the whole poll ought to be rejected.

It seems to be admitted that the board was legally organized in the morning; and while it is shown by four witnesses (*vide* Larned, Jackson, Stebbins, and Hornbeck's testimony) that disorders and obstructions were great, attended by intimidation and violence, it may be difficult to determine what precise amount of disorder, obstruction, and even violence among by-standers adjacent to the polls, should be deemed sufficient to vitiate the election. In the present instance, if the view your committee take of the other branches of the case be correct, the discussion of this question may not be very material. Be this as it may, your committee recommend that the poll stand. If the state of facts proved leave it doubtful whether, on the whole, the poll should be retained or rejected, your committee are of opinion that they will best avoid the establishment of bad precedents, by giving effect to the returns in all cases of doubt.

Third. It is insisted by contestant that the vote of the township of "Grosse Pointe" cannot be counted, for the reason that the polls were opened and the election held at a place two miles distant from the place fixed for holding the election by vote of the town in town meeting.

The election was held at the house of one Charles Wilson. It is claimed by contestant that it was regularly appointed to be held at the house of one Michael Kline, two miles distant. It seems to be admitted by both parties that if it was so appointed by the competent authority, and changed without competent authority, it is fatal, and

the vote cannot be counted. Section 508 of the 1st volume of Michigan Compiled Laws, requires that "the annual and special township meetings shall severally be held at the place in the township where the last township meeting was held, or at such other place therein as shall have been ordered at a previous meeting."

It is clearly proved that this election was, at the annual meeting, ordered to be held at the house of "Michael Kline." If this section of the statute applies to this election there is an end of the question, and the vote must be deducted.

The returned member makes a distinction between the election in question and all "annual and special township meetings," and claims that this section does not apply to this election. In the judgment of your committee it is immaterial whether the section apply to this election or not; for if it do not apply, then the statute is everywhere silent on the subject of determining the place where the November election shall be held. But the proof is clear that it is the general custom in that township for the electors to fix by vote at their annual meeting the place of holding the elections in November. The proof is equally clear that they did so fix it in this particular case. They having so fixed it in accordance with the custom, it could not be changed by any inferior authority, since neither custom nor law sanction any change by any individual or any board known to the law. The fact is proved that it was fixed at Kline's by the electors by vote in the annual meeting, and in accordance with the general custom, and in the absence of all law forbidding it, even if the 508th section does not apply. If the 508th section does apply, then the custom, the fact, and the law concur to make Kline's the legal place. Either way the vote, in the judgment of your committee, must be rejected.

Fourth. Your committee have rejected the vote of the township of Van Buren. The law requires that the board of inspectors shall be constituted of three persons in number. The proof is clear that there were but two. And as there was no board of inspectors known to the law, your committee see no way by which any legal effect can be given to the returned vote. They have, therefore, deducted it, although it can in no way affect the decision of this case, whether it be deducted or retained.

Fifth.—*Illegal and fraudulent votes.*—Your committee have been constrained to deduct a larger number of illegal and fraudulent votes cast for the sitting member than all his returned majority. Under this head they have deducted in all, from the returned vote of the sitting member, one hundred and six (106) votes, as being not only illegal, but many of them grossly fraudulent. Some of them were the result of a deliberate purpose to cheat and defraud. It is, however, due to the sitting member to say that it does not appear that he had personal knowledge of it at the time, or is in any respect personally compromised thereby. Of the illegal and fraudulent votes rejected by your committee, there were cast in the 2d ward of the city of Detroit at least fifty-eight (58) votes, and the testimony tends strongly to show that there were sixty-two (62.) In regard to the fifty-eight votes your committee think there is no doubt. These votes were cast in pursuance of a deliberate design or conspiracy to defraud. Your

committee, therefore, deduct fraudulent votes cast for sitting member as follows, viz:

	Votes.
Second ward, city of Detroit	58
Fifth ward, " "	14
Seventh ward, " "	1
Eighth ward, " "	2
Grosse Pointe township	2
Van Buren township at least four votes, while the proof very strongly inclines to 10 votes	4
To which your committee have added 25 votes for the number of Canadians brought into the fifth ward of the city of Detroit by Orvis, Stowell, and Smith. As the number is said to be 25 or 30, your committee deduct the smallest number stated	25
Whole number	106

A detailed statement of the fraudulent votes so deducted by your committee will be found appended to this report.

Upon a review and summary of the whole case your committee find the following result:

The whole number of votes returned for contestant		13,048
Deduct votes returned from 4th ward	230	
Deduct votes returned from Grosse Pointe	27	
Deduct votes returned from Van Buren	104	
		361
Leaving votes for contestant		12,687

The whole number of votes returned for sitting member		13,123
Deduct votes returned from 4th ward	492	
Deduct votes returned from Grosse Pointe	189	
Deduct votes returned from Van Buren	163	
Illegal and fraudulent votes	106	
		950
Whole number of votes for sitting member		12,173
Majority for contestant		514

Your committee therefore submit the following resolutions and recommend that the same be adopted by this House:

Resolved, That George B. Cooper is not entitled to a seat in the 36th Congress as the representative from the first congressional district of Michigan.

Resolved, That William A. Howard is entitled to a seat in the 36th Congress as the representative from the first congressional district of Michigan.

Detailed statement of fraudulent votes rejected by Committee of Elections.

SECOND WARD, CITY OF DETROIT.

Jack Smock
Michael McHugh
James Martin
Charles Ryan
Thomas Payton
William Willson
R. W. Davis
Bunty Davis
Henry Hale
John Collins
Dominick Gallagher
Tim McCarthy
Isaac Bennett
Thomas McCarthy
John O'Sullivan
Jack Martin
Thomas Burns
Pat. Haley
C. J. Gallagher
M. Dougherty
Joseph Barclay
Dan. Tibbitts
George Baker
William Miller
Nat. Coughlin
C. J. Jubenville
James McCann
Pat. Reily
A. Patterson
E. O. Keefe
Harvey Van Metor
Mike Leddy
John Crowley
Pat. Hill
John Carr
Jas. Carr
Pat. Maloney
John Breman
Dennis Hanready
—— Scott (assumed name)
William Edwards
William Hood
John Duffy
Dennis Howrigan
John Hancock
John Larryville
Theodore Duryea
Richard Filbur
Jerry Sullivan
John McDonnell
John Willetts
Moses Lapointe
Thomas Bell
Joseph Bowen
Pat. Sidney
Joseph Huser
Antoine Gore
Thomas Clancey.

FIFTH WARD, CITY OF DETROIT.

Fred. Brooks
W. Watriss
C. B. Orvis
John Smith
H. Lutika
George Williams
Henry Kelly
John Warden
Joel Smith
Joseph Warner
Thomas Simpson
John Folger
Thomas Hughes
John Kolfer.

SEVENTH WARD, CITY OF DETROIT.

John Kolfer.

EIGHTH WARD, CITY OF DETROIT.

George Williams
Henry Kelly.

VAN BUREN TOWNSHIP.

Hiram Fish	Edward Sickis
Napoleon Trotter	Edward McIntosh.

GROSSE POINTE TOWNSHIP.

Michael Griner	Andrew Griner.

In addition to the above, the committee deduct 25 votes for Canadians brought into the fifth ward of the city of Detroit by Orvis, Stowell, and Smith. The proof is clear that from 25 to 30 were brought into the ward and voted the democratic ticket. The committee have deducted the smallest number, viz : 25 votes.

MINORITY REPORT.

Mr. GARTRELL, from the Committee of Elections, submitted the following views of the minority of the committee:

The undersigned, members of the Committee of Elections, to whom was referred the memorial of William A. Howard, contesting the seat of George B. Cooper as the representative of the first congressional district of Michigan, submit the following report:

At an election held for representative in Congress for the first congressional district of Michigan on the 2d day of November, 1858, George B. Cooper, the sitting member, received 13,123 votes; William A. Howard, the contestant, received 13,048 votes, and scattering 18 votes; and on the 30th day of November, 1858, Mr. Cooper was furnished with the certificate of the secretary of state showing his plurality to be 75 votes. On the 28th day of December, 1858, notice of contest was served upon the returned member, and his answer thereto served upon the contestant on the 26th or 27th of January following, all in compliance with the provisions of the act of Congress approved the 19th of February, 1851.

The notice of contest contains *twenty-two* grounds, mostly of a vague and indefinite character, the objections to which, for want of particularity of specifications, may be considered as waived by the answer of the sitting member, and the issues accepted by him as presented in notice of contest. The said congressional district is composed of four counties—Jackson, Livingston, Washtenaw, and Wayne; and all the evidence taken and returned relates to *but five places of voting* in the last named county. Seventy-five witnesses were summoned by the contestant, of whom but fifteen appear to have been examined by the parties or their counsel. The case is narrowed down by the admissions and argument of the contestant to *four points*, upon either of which he claims to be entitled to the seat in controversy. He insists that the entire vote at the three following places of voting should be disallowed and rejected: first, the second ward election; second, the fourth ward election; third, the "Grosse Pointe" election; and fourth, that the number of illegal votes cast for the sitting member was greater than his returned majority in the whole district. The aggregate number of votes at the aforesaid places of voting is 1,418, of which number 459 were for the contestant and 959 for the sitting member. To reject this large number of votes, as contended by the contestant, upon the trivial and insufficient evidence furnished, would be an act of great injustice to the sitting member, and a wanton disregard of the elective franchise.

The irregularities complained of in the second ward having been decided unanimously by the Committee of Elections to be unimportant, may be dismissed without remark.

Fourth ward election.

The vote in this ward was for—

	Votes.
George B. Cooper	492
William A. Howard	230
Majority	262

This entire poll is sought to be thrown out for several alleged irregularities, which may be stated as follows: 1st, because two different ballots are said to have been put in the same box; 2d, because no sufficient poll-lists were kept and locked up in the box; 3d, because the box containing the votes was not sealed as the law requires; 4th, because an unsworn inspector of election is said to have been substituted at 5 o'clock p. m., after the polls were closed. These objections involve mixed questions of law and fact to be settled by the statute laws of Michigan and the evidence in this case. Let us consider them in an inverse order, and see first whether there has been such violation of law as to justify the House in rejecting all the votes polled in this ward.

All the laws applicable to the questions under review will be found in the Compiled Laws of Michigan, vol. 1, sections 42 and 43, are as follows:

SEC. 42. "At the general election, the supervisor, the justice of the peace, not holding the office of supervisor, whose term of office will first expire, and the township clerk of each township, and the assessor and alderman of each ward in a city, or if in any city there be not an assessor in every ward, then the two aldermen of each ward *shall be inspectors of election, two of whom shall constitute a quorum.*

SEC. 43. "In case three of such inspectors shall not attend at the opening of the polls, *or shall not remain in attendance during the election*, the electors present may choose *viva voce* such member of such electors as with the inspector or inspectors, shall constitute a board of three in number, and such electors so chosen *shall be inspectors of the election during the continuance thereof.*"

These provisions are explicit and define unmistakably *what persons* are authorized to act as inspectors. Now, what are the facts? Mr. Dudgeon, an *alderman* of the fourth ward and *ex-officio an inspector of election*, was at the polls in the morning but declined serving, whereupon the electors present *chose viva voce* Captain Katus, who acted until the polls closed at 5 o'clock in the evening. Captain Katus then retired and Mr. Dudgeon took his place *without objection* from the *other inspectors* or the electors present. His duty was simply to officiate with the two other inspectors in counting the poll-lists, examining the ballots, and making up the official returns. The evidence of Mr. Tillman, also an inspector and *warm political supporter* of the contestant, shows that Mr. Dudgeon acted fairly and honestly. At pages 45 and 47 of the evidence, Tillman, upon the cross-examination, says:

"Question. How many acting inspectors were there during the taking in of the votes?

"Answer. Three; myself, Lacroix, and Katus.

"Question. Was Lacroix an alderman of the ward?

"Answer. He was

"Question. Was Dudgeon an alderman of the ward?

"Answer. He was, but declined to serve in the morning, and Captain Katus was elected an inspector in his place by the electors present at the polls. I was elected in the same way.

"Question. Did you, Katus, and Lacroix, act as inspectors until the polls were closed?

"Answer. We did. After closing the ballot-box Katus retired and Dudgeon took his place, and he, Lacroix, and myself, went through with the canvassing of the votes.

"Question. Did you join in the official return of the canvass?

"Answer. I did.

"Question. Was the official return of the canvass a correct one?

"Answer. It was not.

"Question. What was the error?

"Answer. I think there was an error of two votes on governor.

"Question. Was there any error in relation to the votes for Congress?

"Answer. There was not.

"Question. Are you a republican?

"Answer. I am.

"Question. How many clerks of election were there?

"Answer. Four; and each of them kept a separate poll-list.

"Question. Did all of these poll-lists differ?

"Answer. They did.

"Question. How much from each other?

"Answer. I cannot tell; one of them differed very much from the others; two of them, however, I think, were nearly correct, and agreed within two or three.

"Question. Did you proceed with the canvass on the same night when the polls closed?

"Answer. We did; we first sorted out the general and city tickets in separate piles.

"Question. Did you find any double ballots?

"Answer. We did, and placed them out by themselves.

"Question. Did you then count the ballots, both for the general ticket and for the city ticket?

"Answer. We did.

"Question. Were there the same number of each?

"Answer. There was an excess of State over the city ticket of from five to eight ballots.

"Question. Do you remember whether the general tickets exceeded the number on the poll-lists?

"Answer. They did from five to eight.

"Question. What was done with these?

"Answer. We looked over the tickets and made up our minds

which ought to be thrown out; they were those which appeared to have been voted double.

"Question. Were the tickets destroyed democratic or republican?

"Answer. I don't know; but I think they were half and half.

"Question. Were not the ward and general tickets of both parties easily distinguished from each other?

"Answer. That depended upon the manner in which they were folded; if you could see the head of the ticket, they were.

"Question. Were the boxes both sealed and locked on the first night after election?

"Answer. They were.

"Question. Did you not canvass the vote for representative in Congress during the next day?

"Answer. We did.

"Question. Did you find after that, and before making your official returns, any discrepancy in the ballot on representative in Congress as if there had been any tampering with the ballots?

"Answer. We did not.

"Question. Have you any reason to believe, or do you believe, from the time the polls closed to the signing of the official returns, that there was any tampering or foul dealing with the ballots cast in that ward?

"Answer. I do not."

It will thus be seen that the poll-lists were made to correspond according to the provisions of the statute; that the boxes were both *sealed and locked;* that there was no tampering with the ballots, and that the *official returns* of this ward were *correctly made.*

But it is said that Mr. Dudgeon was *not sworn.* This charge is also contradicted by the contestant's own *friend* and *witness,* Tilman, as follows:

"Question. Do you hold in your hand the official oaths as inspectors of election of yourself, Dudgeon, and Lacroix?

"Answer. I do; the bodies of the oaths are in the handwriting of Mr. Dudgeon.

"Question. Do you know Dudgeon's signature?

"Answer. I do.

"Question. When did Dudgeon sign this?

"Answer. On the 5th or 6th of November, three days after the election; the date of the jurat is on Tuesday, the 2d, but it was not signed till Friday, 5th; Lacroix, Katus, and myself were sworn before we entered upon our duties, but I have no knowledge of Dudgeon's being sworn at all; we signed our oaths on Friday, or the day when we made our official returns, some days after election.

"Question. Do you know whether Dudgeon was sworn or not?

"Answer. I do not; he was not sworn in my presence.

"Question. By whom is the jurat of Dudgeon's oath signed?

"Answer. By Alderman Lacroix; I know his signature, and by that jurat the oath purports to have been administered on the 2d November; as Dudgeon was not sworn in my presence, I do not know that he was sworn at all."

This testimony would seem to dispose of the irregularities complained of at this ward.

"Grosse Pointe" election.

At this precinct there were—

For George B. Cooper..... 189 votes.
For William A. Howard..... 27 "

Shall this poll be excluded because, as charged by contestant, the place of voting was changed from Kline's to Wilson's? We think not. Section 508, vol. 1, C. L. of Michigan, cited by contestant, refers exclusively to *township meetings*, and not to *general elections*. It provides that "the *annual* and *special township meetings* shall be held at the place in the township where the last *annual* meeting was held, or at such other place there as shall have been ordered at a previous meeting." Will it be seriously contended that the regulations for these annual township meetings apply to general State elections held *biennially?* On this point we have, fortunately, no room for doubt. Section 41 of the same volume contains this clause:

"The township clerk, or inspector of elections, receiving either of the notices directed in this act to be delivered to him, shall, by notice in writing under his hand, give at least ten days' notice to the electors of the township or ward of the *time* and *place* at which such election is to be held and the officers to be chosen; and such township clerk or inspector shall cause such notices to be posted up in at least three of the most public places in the said township or ward."

In obedience to this law, the township clerk gave notice of the time, and fixed the *place* of election at Wilson's, where it seems the voters of Grosse Pointe assembled and voted.

Mr. Moran, page 25, says:

"Question. Was the election held at the place where it was advertised to be held by public notice?

"Answer. I did not see the notice, but I understood it was noticed to be held at Wilson's; such was the current report.

"Question. Have you been informed by the supervisor of the town that the town board had designated Wilson's place to hold the election at?

"Answer. *I have.* There was a good deal of excitement in the town, and I think one of our town board told me they had consulted Levi Bishop, esq., Mr. Howard's law partner, in relation to it.

"Question. Did the persons who told you that they had gone to Kline's come to Wilson's?

"Answer. *They did.*

"Question. Do you know of any person who was prevented from voting that day in consequence of not knowing where the polls were held?

"Answer. *I never heard of such.*"

The undersigned submit that the election held at the house of Wilson, in the township of "Grosse Pointe," was in all respects legal, and should be so considered by this House.

One other ground of contest remains to be examined. Has the sitting member received illegal votes enough to overcome his official majority and entitle the contestant to the seat? An answer to this inquiry can only be had by a strict and scrutinizing examination of the evidence relating to persons charged with having voted fraudulently. The contestant contends that the proof shows 108 illegal votes for the returned member, and charges that 60 of these were cast in the *second ward* of the city of Detroit, 14 in the fifth ward, 2 in "Grosse Pointe," 2 in the eighth ward, 1 in the seventh ward, 25 which *he says* were cast by the "Orvis men," and 4 in the town of Van Buren. We will consider these votes in the order suggested by the contestant.

1. *The second ward of the city of Detroit.*

Of the 60 votes attacked in this ward, the undersigned find 9 of that number to have been legal, 11 doubtful, the remaining 40 being known as Howrigan's men. Mr. Howrigan, with whom these 40 men boarded, swears (page 23) that 16 of them were *known to him* to be legal voters. He also swears, at page 23, that 5 others who boarded with him *did not vote*. We have, then, in this view, the following result:

In second ward votes attacked by contestant		60
Deduct legal votes	25	
Deduct not voting	5	
	—	30
		30

We submit that none of the votes attacked in the second ward can be thrown out, unless it be the 9 doubtful above mentioned. Mr. Larned, speaking of these voters, (page 14,) says:

"Question. How do you know the persons named in the first list voted the democratic ticket?

"Answer. I judge so from the general appearance of the outside of the ballot. The ballots of the different parties were entirely dissimilar.

"Question. Were not the ballots, when put in by the several voters, so folded as to conceal the names of the persons voted for?

"Answer. They were.

"Question. Did not the ballots containing the name of the person voted for for representative also contain a number of other names voted for for the various State and county officers, and also members of the legislature?

"Answer. They did.

"Question. Did not the ballots, when full, contain eighteen or twenty names?

"Answer. They did.

"Question. As to the names contained in your second list, do you

mean to say they did not reside in the second ward on the 2d day of November last?

"Answer. I do not mean to say so.

"Question. Are there not a great many persons residing in the second ward whom you do not know?

"Answer. There are."

Mr. Howrigan, who is the only other witness as to these votes being illegal, says, pages 21, 22:

"Question. Do you know whether these men were legal voters in the wards where they properly resided?

"Answer. *I do. As to many of them, I knew that they were voters, and all of them told me that they were.*

"Question. Had all of these men resided in the ward ten days before the election?

"Answer. *They had.* And some of them longer.

"Question. Were these men day-laborers?

"Answer. They were mechanics, laborers, sailors, and young men out of employment; and, so far as I know, they were legal voters in this ward. I base this opinion on the constitution and law, and their residence of ten days in the ward. I refer to section 1, article 7, of the constitution of Michigan, where the qualifications of voters are laid down. I knew the qualifications of an elector before the election. Only one had a wife."

On page 24, Mr. Howrigan says:

"Question. *Do you remember whether these men were challenged on the day of election?*

"Answer. *They were all challenged and swore their votes in according to the statute.*

"Question. *Were all the men who boarded with you challenged on election day?*

"Answer. *They were, and swore in their votes,* except one O'Callaghan."

It will be observed that the persons who boarded at Howrigan's, and voted, are attacked as non-residents. No witness *has sworn that they resided out of the State of Michigan.* Mr. Howrigan says "all these men had resided in the ward *ten days before the election,*" and that their votes were all *challenged.* Sections 107 and 108 of statutes of Michigan prescribe the qualifications of voters. This law provides—

"If any person offering to vote shall be challenged as unqualified by any inspector or any elector entitled to vote at that poll, the chairman of the board of inspectors shall declare to the person challenged the constitutional qualification of an elector; and if such person shall state that he is a qualified elector, and the challenge is not withdrawn, one of the inspectors shall tender to him one of the following oaths, as he may claim to contain the grounds of his qualifications to vote: *You do solemnly swear (or affirm) that you are twenty-one years of age; that you are a citizen of the United States; that you have* RESIDED *in this State three months next preceding this day, and in this township*

(or ward, as the case may be) ten days next preceding this day, and that you have not voted at this election;" (or one of the other forms in the statute—all of which are the same as to residence in the State and ward, and having voted.)

"And if such person so challenged will take either of the above oaths, his vote shall be received; but if such person shall therein swear falsely, upon conviction thereof, he shall be liable to the pains and penalties of perjury."

In the town of Grosse Pointe two votes were attacked by two witnesses, Daniel and John Corby. These voters were Michael and Andrew Griner. In the direct examination, Daniel Corby (page 56) testifies that there were two persons who voted in that township who did not reside there, and he named Michael and Andrew Griner; but what further did he say?

"Question. *What ticket did they vote?*

"Answer. *I cannot tell; I did not see the tickets at all;* I suppose they were democrats.

When cross-examined, (page 57,) he said:

"Question. Do you know whether the Griner brothers had not resided in the township ten days before election?

"Answer. *I do not. They may for aught I know.*

"Question. Do you mean to say they were illegal voters at the November election?

"Answer. *I cannot swear that they were."*

And John Corby swears, (page 58,) in his cross-examination as follows:

"Question. Do you know whether the Griner brothers had resided in Grosse Pointe for ten days before election?

"Answer. *I do not.*

"Question. Do you know whether or not they were voters in Grosse Pointe in November?

"Answer. *I do not."*

Such is the character of the evidence of the illegal votes in the township of Grosse Pointe.

We come now to the illegal votes in the township of Van Buren. David Carr swears, (see page 61,) that he knows four, viz: Hiram Fish, Napoleon Trotter, Edwin Sichis, Edward McIntosh, were illegal voters. And he gives a list of six *he believes* were not entitled to vote. In his cross-examination, (see page 62,) he was asked, severally—

"What ticket each one of the persons named voted, and he answered as to all, *that he did not know."* And some of them he does not pretend to even have seen vote. It does not raise even a presumption. His testimony is just as good to prove they voted for Howard as Cooper, and that amounts to just nothing at all.

This brings us to the *fifth* ward. The first witness is David Smith. He swears to—

1. Fred. Brooks	No. 299	4. John Smith	No. 54
2. W. Watriss	236	5. H. Lutika	485
3. C. B. Orvis	478		

When asked, on direct examination, (see pp. 34, 35,) as to Lutika: Do you know whether or not he was a legal voter? he said *he did not.* And as to Orvis, when asked how he knew that he voted the democratic ticket? he replied that he had a democratic ticket when he started to the polls, though I did not see him put it in. And on page 38, when speaking not only of these persons named, but all of the Orvis voters, he said:

"Question. Can you state whether the votes put in by Orvis men were illegal?

"Answer. I cannot, of my own personal knowledge.

"Question. How many republican tickets did you give to the Orvis men?

"Answer. I cannot say exactly, but there was a good many.

"Question. Do you know what ticket these Orvis men voted?

"Answer. I do not know what ticket they voted; *no man can tell.*

"Question. Do you know how many there were of the Orvis men?

"Answer. *I do not know.*"

We submit that no sufficient proof has been adduced to authorize the conclusion that any number of votes should be deducted in either of the last-named precincts.

Andrew K. Edgar, who, it will be recollected, was examined *on the last day* allowed by the statute of 1851 for taking evidence, impeaches, we think successfully, the following votes, viz:

1. George Williams,	6. Thomas Simpson,
2. Henry Kelly,	7. John Falger,
3. John Warden,	8. Thomas Hughes,
4. Joel Smith,	9. John Kalijar.
5. Joseph Warner,	

His testimony is positive; and in the absence of proof attacking his veracity, we do not feel at liberty to disregard it, although none of the above names are on the *poll lists.*

The undersigned, having examined the several grounds relied upon by the contestant, and being satisfied from the evidence that the sitting member was fairly and legally elected, submit the following resolution:

Resolved, That George B. Cooper is entitled to retain his seat in the present Congress as the representative of the first congressional district of Michigan.

LUCIUS J. GARTRELL,
W. W. BOYCE.

I concur in the result arrived at in foregoing resolution.

J. W. STEVENSON.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 446.

NEBRASKA CONTESTED ELECTION.

APRIL 20, 1860.—Laid upon the table, and ordered to be printed.

Mr. CAMPBELL, from the Committee on Elections, submitted the following

REPORT.

The Committee on Elections, to whom was referred the memorial of Samuel G. Daily, contesting the right of Experience Estabrook, the sitting delegate, to a seat in the 36th Congress, as the delegate representing the Territory of Nebraska, beg leave to submit the following report:

The election out of which this contest has arisen took place on the 14th day of October, 1859. The returns filed in the office of the secretary of the Territory—where, by law, they were required to be filed—show that 3,100 votes were counted for Mr. Estabrook and 2,800 for Mr. Daily. The former having, by this count, a majority of 300, the governor of the Territory issued to him the certificate of election, by virtue of which he is now the sitting delegate.

The committee find, however, from an examination of the evidence before them, that in order to make for Mr. Estabrook the aggregate of 3,100 votes, there has been counted for him 292 votes as polled in the county of Buffalo, 28 votes as polled in the county of Calhoun, 21 votes as polled in the county of Izard, 20 votes as polled at the precinct of Genoa, in the county of Monroe, and, according to their estimate, 68 votes as polled in the county of L'Eau Qui Court, all of which are illegal. And they will proceed to state the reasons which have brought them to this conclusion.

I. As to the votes from Buffalo county:

By an act passed by the legislature of Nebraska Territory March 14, 1855, provision was made for the organization of this county. This is its language: "That all that portion of territory included in the following limits is hereby declared organized into a county, to be called Buffalo: Commencing at a point in the centre of the Platte river, ten miles east from the mouth of Wood river, running thence westward up the southern channel of the Platte to the mouth of Buffalo creek; thence north thirty miles; thence east to a point directly north of the place of beginning; thence south to the place of beginning. The seat of justice is hereby located at Nebraska Centre."

No steps were taken, under the laws of the Territory, for the organization of this county by the election of officers; and it is the opinion of the committee that without such election there could be no organization. The act of the legislature does not organize a county; it merely provides for and authorizes an organization—that is, it authorizes an election to be held for county officers, under the general law regulating elections. If no such election is held, the county, notwithstanding the act of the legislature, cannot exercise any of the powers of an organized county, and cannot legally vote either for territorial officers or delegate to Congress.

The legislature of the Territory of Nebraska has provided by an act "in relation to new counties:" "That whenever the citizens of any *unorganized* county desire to have the same *organized*, they may make application by petition, in writing, signed by a majority of the legal voters of said county, to the judge of probate of the county to which such unorganized county is attached, whereupon said judge of probate shall order *an election for county officers* in such unorganized county." It then provides for a notice of the election, and a return of the votes "to the organized county," the execution of the necessary bonds by the officers elected, and the entire mode of consummating the organization. And it further provides that until this is done "all unorganized counties shall be attached to the nearest organized county directly *east* of them for election, judicial, and revenue purposes."

The committee do not suppose that the legislature intended to dispense with this mode of organization by the simple use of the word "*organize*" in the act creating a county. To suppose that they did would be to assume that they designed to prevent an election by the people of the necessary county officers. They know of no possible mode of legally organizing a county except by the election of officers by the people—a rule which must meet with universal assent under a popular form of government.

It is not pretended that Buffalo county was attached "to the nearest organized county directly *east* of" it for election purposes, for the vote is reported from Buffalo county directly; and hence, the only question to be inquired into is, whether or not it was so organized as that a vote could be legally polled within it?

It appears from the evidence that in May preceding the election the governor of the Territory was solicited "to *appoint* the county officers for Buffalo county," but that finding himself possessed of "no such power," he declined to do it. The governor was clearly right in this determination. He had no power to appoint officers; not even to fill a vacancy. He had once possessed this latter power, but the legislature had taken it away, and had provided that the vacancies should be only filled by election. But he was as clearly wrong in the other conclusion to which he came. He says that he considered "that Buffalo county was *fully organized* by the act of the territorial legislature." How it was organized *without officers*, he does not say, and the committee have already stated that, in their opinion, such a thing is impossible. But, acting upon this strange assumption, he says he advised the course which he considered necessary to be taken. This

was, that application should be made to the county commissioners of the nearest county on the east to have the initiatory steps taken for the election of county officers. It is not material to inquire whether he was right or wrong in this, because it does not appear that any such steps were ever taken. On the contrary, it is in proof that a few persons met together, without any notice, and, after the manner of a public meeting for political or other purposes, elected a president and secretary, and, upon *mere motion and vote, chose all the county officers!* The proceedings of the meeting were signed by the president and secretary, and forwarded to the governor; who, upon the strength of it, commissioned the officers so chosen, although there is no law authorizing him to issue commissions to county officers. And these are the officers who must have conducted the pretended election in Buffalo county, and who returned the 292 votes sent from that county for the sitting delegate. The committee consider the whole of these proceedings irregular and void in law.

The committee cannot omit further comment upon this extraordinary proceeding; for, to your committee, extraordinary it seems, in every sense of the term. The meeting was held on the 25th of June, 1852, at the place designated in the act of the legislature as the county seat, and where, according to the proof, there is "*one dwelling-house, one storehouse, one barn or stable, and one warehouse,*" and where but "*three persons*" constituted the population. The object of the meeting was avowed to be the "*recommending* suitable persons to fill the several offices of Buffalo county." And this object was carried out by the simple adoption of the several *motions* put to the meeting. For example: Mr. Charles A. Henry moved that Henry Peck be chosen probate judge, Charles T. Lutz sheriff, Joseph Huff commissioner of one of the precincts, Patrick Care justice of the peace, and John Evans constable, and they were all so chosen by the adoption of the motion. And so of all the rest. And then it was resolved "that Dr. Henry, with men living in the eastern precinct, do have them *recommend* suitable persons to fill the offices of justice of the peace and constable" in a precinct not supplied with officers at this meeting. And the whole proceedings closed with a resolution to the effect that the meeting "*recommend* the above-named gentlemen to hold the several offices to which they have been *nominated* by this meeting, and request the *governor* of this Territory to *commission* them for said offices."

It will be seen that this meeting merely "*nominated*" these officers, and *recommended* them to be *commissioned* by the governor; or, in other words, that it designed that the governor should *appoint* them. It has been already stated that the governor had no such power—that he could have nothing to do with the selection or commissioning of officers. Yet, notwithstanding this want of power, he did both *appoint* and *commission* the persons recommended and nominated by this meeting, and several others who were not recommended. It needs no argument to prove that no authority to hold an election or to transact any county business was conferred upon these persons by his act, and that all their proceedings are absolutely void. It is of no consequence to inquire what power he considered himself as possessing, since the fact that he did *appoint* them appears in proof. In a letter dated

July 26, 1859, and written from the "executive chamber," to one of the persons nominated to him, he says: "I have this day *appointed* the following officers," &c., going on to enumerate those who were nominated by the meeting. All these proceedings were in clear violation of law.

The foregoing facts in relation to the pretended organization of Buffalo county being made by the contestant, and the sitting delegate having offered no evidence of any other organization, it is necessarily to be inferred that there was no other; since, if there had been, he would have had no difficulty in showing it. Indeed, he has left it to be inferred from his mode of cross-examining the governor, whose testimony has been taken, that he did not rely upon any organization, but upon the legality of that made by the governor. The committee, therefore, conclude that there was no other, and have no difficulty in deciding that to be clearly in violation of law.

The 292 votes which were returned from Buffalo county were, therefore, illegally counted by the canvassers for the sitting delegate, and should be deducted from his poll.

It is apparent to the committee, from the proof in the case, that the parties who perpetrated this fraud were well aware of it. Of the 292 votes returned and counted from Buffalo county, 238 of them were reported as having been polled at a place called "*Kearny City*," and the certificate accompanying the returns state that this place is "*in the county of Buffalo*." This is not correct by the act laying out the county, as already quoted; the *south* boundary is the Platte river, so that no part of it extends south of that river. Yet it is in proof that "Kearny City" lies on the *south* side of the Platte! A fact which must have been known to all the persons engaged in perpetrating this fraud. Such men would have no difficulty in contriving to furnish a list of votes for the whole county as easily as those furnished for this place, and doubtless did the entire work from the same motive

It is scarcely possible that Buffalo county could have furnished so large a vote as 292; to have done so it must have been the sixth county, in point of population, in the Territory, and must have contained at least 1,500 inhabitants. The proof is, that there are "not over eight houses," and not "exceeding fifteen residents," and not "one acre of cultivated land or a farm-house," at or in the neighborhood of Kearny City; that at Nebraska Centre, the place named in the act as the county seat, there is only "one dwelling-house, one storehouse, one barn or stable, and one warehouse," one farm in cultivation, and one or two near by opening for cultivation; and at Centralia there was but a single individual. The sitting delegate does not offer to show any other settlements than these, and the committee are left no other alternative but to conclude that there are no others; if there had been it was his duty, after this proof made by the contestant, to have shown it. Hence, the whole of this vote of Buffalo county must be set aside as illegal and fraudulent in the opinion of the committee.

II. As to the votes from Calhoun county:

It is not pretended that Calhoun was an organized county, within the meaning of the statute. The act defining its boundaries is entitled "an act to *establish* new counties, &c.," and it was, therefore, in the same condition precisely as Buffalo county; that is, the act authorized such steps to be taken, without additional legislation, as were necessary to its organization. Like Buffalo, it could have been organized by the proper application to the county commissioners or probate judge (no matter which) of the nearest county on the east. But nothing of this kind was done. On the contrary, it was attached to the county of Platte for election purposes, and constituted a voting precinct of that county; and as such voting precinct it was the duty of those who had charge of the election there to return the poll-books to the clerk of Platte county, whose duty it was, by law, to send an abstract of them to the governor. But this was not done. Instead of doing it they sent the returns directly to the governor, and they were taken out of the post office by his private secretary, who opened and examined them, and then sent them himself to the clerk of Platte county, with directions to return them with the Platte county returns. This was manifestly a violation of law. The law of the Territory, as also of all the States, has pointed out a particular mode of making election returns, and has designated particular officers who shall open and inspect them. If they are opened and inspected by any others they are thereby vitiated; for if such a practice were tolerated innumerable frauds might be perpetrated, and the popular will defeated. By the law of Nebraska Territory the votes polled in Calhoun county could not be properly opened by any other persons than the probate judge and three disinterested householders of Platte county. Yet it is in proof that they were opened by the private secretary of the governor, and it is not proven or pretended that the probate judge, or any three householders of Platte county, ever saw them. On the contrary, it is proven that they were sent by the private secretary of the governor to the clerk of Platte county, and by him sent back to the governor. The clerk must have opened them himself; this is the necessary inference.

In the opinion of the committee, therefore, this violation of law vitiates the whole of the returns from Calhoun county. And the committee think that, for another reason, they should be set aside as fraudulent.

The contestant has proven by competent witnesses that the entire settlements in this county consisted of *two* families in the northwestern part, and *four* families in the southeastern part of the county, and that the whole voting population of the county does not exceed *six!* Yet there are 32 votes returned; 28 for the sitting delegate, and 4 for the contestant. One witness who has resided in the county swears that he does not know of a voting precinct in the county, or of an election being held. Another swears that he saw the returns in the clerk's office of Platte county, where they were sent by the private secretary of the governor; that he took from them the names of the persons who were represented as having conducted the

election, and when these names were shown to the witness who had resided in that county, the latter swore that he *never heard of such persons!* From the whole of the evidence on this point, the committee conclude that these returns were *forged* by some person; and they are supported in this conclusion by the fact that the clerk of Platte county has certified, since this contest began, that they "have been *abstracted*" from his office—a fact which goes to show that somebody had a motive for their concealment or destruction.

The committee think that as such proof as this has been made by the contestant, it was incumbent on the sitting delegate to show such facts as would rebut it, so as to set the matter right if it amounted to a misrepresentation. His not having done so ripens the presumptions they necessarily excite into convictions, and leaves the committee no other alternative than to conclude that the whole vote of Calhoun county is fraudulent, and should not have been counted.

The committee, in this view of the vote from Calhoun county, assumed it to be true, as sworn to by the private secretary of the governor, that this county is attached for election purposes to the county of Platte. But this is denied by the sitting delegate, who insists that it is not so attached, and it is in proof that the clerk of Platte county could find no record of a Calhoun county voting precinct in his office. This view of the matter leaves no doubt about the fraudulent character of the vote; for, if the county was not a voting precinct of Platte, it was evidently not organized, and could not legally vote at all. And besides, sending the return to the clerk of Platte by the private secretary of the governor, and its being opened by him, would vitiate it, as has already been shown.

III. As to the vote from Izard county:

The committee cannot avoid the conviction that the whole vote returned from this county is fraudulent. The vote returned and counted was 24, of which 21 were for the sitting delegate and 3 for the contestant. One witness, who resides on the main travelled road leading to this county, swears that he "never saw a settler of Izard county going to or returning from that county, or heard of one." Another, who visited the county last July, swears that he saw no evidence of settlement, no roads, nor any person who appeared to reside there; and that in travelling through the county he neither saw nor met any person. And a third swears that he has no knowledge of any settlements in the county, and has the opportunity of knowing if there were any. He says he has no doubt there are none at all.

This the committee consider to be competent proof. The non-settlement of a county could be proved in no other way; and being competent, it so establishes the fact of their being no inhabitants in Izard county as to make it conclusive, inasmuch as the sitting delegate has offered no proof to the contrary. His not doing so leaves the inference a necessary and inevitable one, that the county was wholly without population. And having no population it could not have been an organized county, and consequently no election could have been legally held there. The votes reported from there are therefore fraudulent, and should have been rejected by the canvassers.

IV. As to the votes from the precinct of Genoa, in the county of Monroe:

It is conceded that this precinct is "in the reservation of the Pawnee Indians," set apart for their occupancy by the United States. By the act of Congress organizing the Territory it is provided that the territory occupied as an *Indian reservation* shall not be considered a *part of Nebraska Territory*, but that all such territory shall be excepted out of the boundaries until, by arrangement between the United States and the Indians, the title of the latter shall be extinguished. No such arrangement as this having been made between the United States and the Pawnee Indians as to this reserve, it was no part of the Territory, and hence there could be no voting precinct legally established within it. The votes returned from there were therefore illegal and fraudulent, and should be rejected.

V. As to the votes from L'Eau Qui Court county:

The entire vote of this county was counted for the sitting delegate, it being 128 votes. A gentleman who represented the county in the legislature of the Territory swears that there are only from thirty to thirty-five votes in the county; and the witness swears that there are but two settlements in it, and that it is generally unsettled. The *only* witness whose testimony has been taken by the sitting delegate makes a statement to some extent contradictory of these, and speaks of five settlements in different parts of the county. At one of these he says there is only "a single family;" at another, "probably half a dozen voters;" at another, "three dwellings, and *may be more;*" at another, "one house;" and at the last, the county seat, "about twenty or twenty-five houses." He speaks also of having seen some emigrants going to two other portions of the county, but does not say whether or no they settled there; and he also says that the year before the county polled eighty votes. The committee conclude, from all the evidence, that there cannot be over sixty votes in the county, and that all the vote above that number is fraudulent; that is, that sixty-eight votes should be deducted from the number counted for the sitting delegate.

The fraud in this county is abundantly proven. Two of the witnesses visited the county after the election to procure a copy of the poll-book. They succeeded in obtaining it from the clerk, but it was taken away from them by a mob and destroyed before they could get out of the county, those who composed the mob declaring that they were parties to the fraud, and were resolved not to be exposed. The original poll-books were afterwards *stolen* from the clerk's office, and, doubtless, were also destroyed by the same men; but the witnesses saw enough of them to swear that they contained the names of Howell Cobb, Aaron V. Brown, "ten names of McRea in consecutive order," and several others whom they knew to be non-residents of the county.

This proof of the contents of this poll-book is entirely competent, since the loss of the original is shown, and shows such fraud as ought not to go unpunished by the proper territorial authorities. The committee, in view of them, are satisfied that they have made a liberal allowance for the vote of the county.

The committee deem it due to the sitting delegate to state their opinion upon the main preliminary points made by him.

He insists first: That under the act of February 19, 1851, but one notice of contest could be served by contestant upon the sitting delegate, and that, having served that *one* notice, the power, under the act, is exhausted; and whether sufficient or not, the contestant must abide by it.

Your committee entirely dissent from this position. In their view more than one notice may be served under the act of 1851, provided they shall be served within the time required by that act; and they may be treated as one notice, or as supplemental notices, or the contestant may, with notice to the opposite party, withdraw an insufficient notice and serve a sufficient notice in the place thereof. All the act of 1851 contemplates is fair notice of the subject-matter of contest within the time specified by the act itself. As the sitting delegate has had such notice, in the opinion of the committee, he has no ground for complaint.

Second: That there is no competent proof showing the result of the election.

The committee think otherwise. The proof upon this point consists of a copy of the abstract showing the result, as ascertained by the governor and the other canvassers, and filed by the governor in the office of the secretary of the Territory. The law of the Territory makes it the duty of these canvassers to count the votes and ascertain the result of the election. This must necessarily consist of the putting together of the several returns, summing them up, and thus ascertaining the result. When the result is thus ascertained, the governor is required to issue a certificate of election to the person having the highest number of votes. He, of course, files away the result or abstract amongst the executive records as the evidence upon which his certificate is based. The returns of the clerks of the several counties would not be such evidence, wheresoever filed, for they show no result. They are mere abstracts of the poll-books returned from the precincts, and are sent to the governor that one general and final abstract may be made, showing the aggregate of votes and the result; and this final abstract is, from its very nature, a public record belonging to the executive department.

The act for the organization of Nebraska provides that the secretary of the Territory shall preserve all the acts and proceedings of the governor which pertain to his executive duties. He is, therefore, made the custodian of this abstract, and as the original must remain where it is, it is competent to prove its contents by a certified copy. That is done in this case, and the committee think it is the best evidence that could be offered.

The certificate attached to the abstract shows that the officers of the Territory put this construction upon the law; for it states that it was filed in the office of the secretary *by the governor*, which was, of course, done in obedience to what the governor considered his duty under the law.

Third. That the abstract of votes cannot be properly received, because the contest was closed on January 6, 1860, by a notice from the con-

testant that he would take no further testimony, and the abstract was afterwards procured from the secretary.

There is, as the committee think, nothing in this objection; there is nothing in the facts of the case to give it plausibility even. On the 6th of January, 1860, the attorney of the contestant served upon the attorney for the sitting delegate a notice to the effect that the contestant would "proceed no further for the present with the *examination of witnesses*," &c.; and in the notice it was said, "whether any further testimony shall be taken in his behalf is a question reserved for further consideration;" * * * "should it be deemed necessary to exercise it, a new notice to that effect will of course be given."

The committee understand this as having reference manifestly only to the "*examination of witnesses*." The whole context of the notice shows this, and its object is stated to be that the sitting delegate may have an opportunity of proceeding to take his evidence. It says that if any further evidence is taken notice will be given. This, of course, refers to the taking of depositions; for no notice is necessary to obtain a certified copy of a record. Suppose the contestant had notified the sitting delegate that on a certain day he would apply at the office of the secretary and demand a certified copy of the abstract, what advantage could it be to him? The secretary, in making and certifying the copy, is not a witness, and could not be cross-examined. He performs the whole duty of making and certifying the copy without uttering a word; and the sitting delegate could not have interposed a valid objection to his doing so, for all citizens have a right to such copies of the public records. The argument that such a notice is necessary to obtain a record is frivolous.

But it is said that the sitting delegate is deprived of the opportunity of showing that this abstract is false. He does *not allege it to be false*. If he did, the committee would with pleasure have given him the opportunity to prove it so. But this paper was sent to the House by the judge in Nebraska, before whom the testimony was taken, sealed up with the other papers, and was along with them referred to this committee on the 16th of February, 1860. The order to print was made on the 23d of February, 1860. The sitting delegate was bound to know, and might have known, (if he did not know,) with reasonable diligence, that this abstract was among the papers before the probate judge and your committee all the time. If he had desired to allege anything against its validity or truthfulness, it was his duty to have brought it to the notice of the committee and House, and have asked for permission to substantiate his accusation by proof. But he has done nothing of this kind, and only argues against the certificate that he should have had notice when it was obtained, since if he had had such notice he *might* have shown it to be false. The committee are unable to appreciate the force of this argument, but consider the paper, having reached the House and committee regularly, together with the other papers, as competent proof. They consider the seal of the secretary as giving his certificate the import of absolute verity, and decline to impeach it except in a direct mode. As the sitting delegate has made no such case as involves an inquiry into its validity, the committee have declined to prosecute a collateral one.

Fourth. That the evidence has not been taken before a proper officer, within the contemplation of the act of 1851.

The act of 1851 provides that depositions may be taken before justices of the peace, notaries public, or judges of courts of record. In this case they were taken before a judge of a court of probate in Nebraska, and it is insisted by the sitting delegate that a court of probate is not a court of record. The committee think differently. Such a court can do nothing without a record, and from the very nature of its duties, it must be a court of record. But if it were possible to doubt about such a position, the statute of Nebraska Territory has, in so many words, declared courts of probate to be courts of record.—(Laws of Nebraska, 1855, page 119.)

Other technical objections were made by the sitting delegate, which are so immaterial as to render any reference to them wholly unnecessary.

The committee consider the case of the contestant clearly and abundantly proven, and from the absence of any contrary proof on the part of the sitting delegate, are compelled to regard the contestant as entitled to the seat. The frauds are palpable; so much so as to require that they shall be rebuked by the House as emphatically as possible. If such conduct should be tolerated, it would most seriously assail the integrity of the ballot-box.

The result to which they have come may be summed up, therefore, as follows:

Estabrook's whole vote	3,100
Daily's whole vote	2,800
Estabrook's majority	300
Illegal votes counted for Estabrook:	
Buffalo county	292
Calhoun county	28
Izard county	21
L'Eau Qui Court county	68
Genoa precinct, Monroe county	20
Total of illegal votes	429
Illegal votes counted for Daily:	
Calhoun county	4
Izard county	3
Genoa precinct	3
Total of illegal votes	10

There should be, therefore, deducted from the 3,100 votes counted for the sitting delegate, 429 illegal and fraudulent votes, which will reduce the whole vote cast for him to 2,671; and from the 2,800 votes counted for the contestant, there should be deducted 10 illegal and

fraudulent votes, which will make his whole vote 2,790, and this gives to the contestant a majority of 119 votes.

The committee, therefore, recommend the adoption of the following resolutions:

Resolved, That Experience Estabrook is not entitled to the seat as delegate from the Territory of Nebraska to the thirty-sixth Congress of the United States.

Resolved, That Samuel G. Daily is entitled to the seat as delegate from the Territory of Nebraska to the thirty-sixth Congress of the United States.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 447.

WILLIAM SUTTON.

[To accompany Bill H. R. No. 666.]

APRIL 20, 1860.

Mr. C. D. MARTIN, from the Committee on Invalid Pensions, made the following

REPORT.

That they have had the same under consideration, and fully agree with the report made in this case at the 1st session of the 35th Congress, which they now adopt, as follows:

Mr. CASE, from the Committee on Invalid Pensions, made the following report:

The Committee on Invalid Pensions, to whom was referred the petition of William Sutton, praying for pension, having had the same under consideration, report:

That the proofs show that the petitioner was a private in company A, in the 4th regiment of Indiana volunteers, in the war with Mexico; that about August, 1847, while in the service and in the line of his duty, he was attacked with fever and diarrhœa, which continued him on the sick list until January, 1848, when his disease, having become chronic, and having affected his nerves, destroying the sight of one eye and injuring the other, he was discharged from service as unfit for duty; that his infirmities have continued and are incurable, and partially incapacitate him to earn a livelihood by labor. His case amounts to three-fourths of a total disability. Your committee are of opinion that he is entitled to relief, and therefore report the accompanying bill, and recommend its passage.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 448.

SAMUEL GIBBS.

[To accompany Bill H. R. No. 667.]

APRIL 20, 1860

Mr. BRABSON, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Samuel Gibbs, have had the same under consideration, and report:

That it appears from the evidence that the petitioner entered the service of the United States on the 20th day of September, 1814; that while in the service he had a severe attack of the measles, while the army were at Lookout mountain, which so disabled him that he was entirely unfit for duty for nearly two months, and was conveyed to Mobile, Alabama, and while there relapsed by taking cold, and so continued for several weeks. He then partially recovered, and rejoined his company, and continued for the balance of the campaign, and was honorably discharged at Maryville, Pennsylvania, on the 3d of May, 1815. That from the time of his sickness in the army to the present time he has never had his health, and for the last twenty years has been unable to perform a day's labor; and that his disability is the result of disease contracted in said service in the line of his duty. His application to the Pension office was rejected for the reason that the rolls of his company simply "report him as *present*, but furnish no evidence of the disability alleged to have been contracted in the service." The facts set forth above are sustained by petitioner's own oath, by the 2d lieutenant of his company, and by physicians in good standing, in due form. The petitioner is shown to be two-thirds disabled. Your committee therefore report a bill granting him a pension from the date of his application at $6 per month.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 449.

MARGARETTE WATTS.

[To accompany Bill H. R. No. 668.]

APRIL 20, 1860.

Mr. F. W. KELLOGG, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Margarette Watts, have examined the same, and report:

That she is the widow of Alexander Watts, who was an invalid pensioner on the Pennsylvania rolls at the rate of $8 per month. The evidence is clear as to her said husband's service and disability. She made application to the Pension office for half-pay pension, under the act of Congress of February 3, 1853, but her application was rejected, for what reason does not appear by the papers. The proof of her marriage, her identity, her husband's death, and his being a pensioner are all fully proved.

Your committee report a bill granting her a pension at $4 per month.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 450.

FREDERICK SCHAUM.

[To accompany Bill H. R. No. 669.]

APRIL 20, 1860.

Mr. FLORENCE, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Frederick Schaum, respectfully report:

That it appears from a certificate of the Adjutant General's office, that the petitioner was regularly enlisted at Philadelphia in January, 1840, after the usual examinations, as a private soldier in the United States army for five years; that he was shortly afterwards transferred to Fort Wood, in New York harbor, where he was discharged on the 12th of July, 1840, on surgeon's certificate of "general disability—chronic affection of the heart and lungs, caused by a severe injury in the chest."

The petitioner states in his affidavit that his poor health, and ignorance of the English language, (he being a German,) compelled him, after his discharge, to spend much time among his friends in western New York, in efforts to regain his health and to acquire a knowledge of our language to enable him to take measures for obtaining a pension, to which he believed he was entitled, as his disability was occasioned by his exposure while in service, and in the line of his duty in the quarters at Fort Wood, which were then very uncomfortable; that in January, 1855, while at Rochester, New York, he sent an application to the Pension office, which was afterwards returned to him as informal and defective; and that in July, 1858, he renewed his application, but in consequence of his inability to obtain such evidence as the rules of the department required, his application and efforts have been unsuccessful. He further states, that he has used all the diligence that his means and circumstances would permit; that he has been unable to find such officers as could recollect and testify relative to his disability incurred so many years ago; and that he now despairs of obtaining such testimony as the department requires.

By a letter from the Pension office, it appears that the first record of his application on file there was on the 6th of July, 1858; and by a certifiate and oath of two surgeons in Rochester, New York, it appears that they examined him in July, 1859, and testified to his total disability for obtaining a livelihood by manual labor.

The committee believe that the foregoing statements contain the principal and important facts in the case, and that the petitioner is entitled to relief. They, therefore, report a bill granting him a pension at the rate of eight dollars per month, commencing on the 6th of July, 1858.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 451.

WILLIAM G. BERNARD.

[To accompany Bill H. R. No. 670.]

APRIL 20, 1860.

Mr. FOSTER, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition and papers of William G. Bernard, late a soldier in the United States army, asking an increase of pension, report:

That it is in evidence before your committee that the petitioner, William G. Bernard, on the 16th day of November, 1857, at Boston, enlisted in company B, first regiment of dragoons, and under the command of Captain John W. Davidson; that he had been, prior to his enlistment, an accountant.

It further appears that he was with his company ordered to Fort Buchanan, in the Territory of New Mexico, and from thence to Fort Tejon, in the State of California. At the latter place there being an occasion for the use of lumber for the garrison, it is in evidence that the petitioner was ordered by the commanding officer of the post, Lieutenant Colonel Beall, to work in the government saw-mill; and that while so employed, as his certificate of discharge states, he was accidentally thrown upon a circular saw while feeding it, by which casualty his right arm was so severely mutilated that he entirely lost the use of his right hand. He was also severely wounded in the head and face, part of which is sawed off, losing portions of the left molar and lower maxillary, and right superciliary ridge, leaving but the wreck of a man, who is totally disabled from obtaining his subsistence by labor.

It is in evidence that he performed all his duties faithfully and efficiently.

All the foregoing facts are fully proven by the certificate of discharge and by the certificate of the United States surgeon, before your committee.

The petitioner has been allowed a pension of eight dollars per month by the Commissioner of Pensions, being the extent permitted by law to be allowed by him.

The petitioner appeared before your committee, and they are unanimously of opinion that he cannot perform manual labor, nor even use

his hand to write, and that he is wholly disabled from obtaining his subsistence.

Your committee would say that the petitioner enlisted to perform military duty as a dragoon in the army and not as an operator in a saw-mill; but having been ordered by his commanding officer to perform this mill work, the requirements of strict discipline rendered it necessary that he should obey.

And your committee would say, also, that when the government induces a soldier to enlist in its army, a material part of the contract is, that he shall, among other things, receive proper medical treatment, attention, and skill, in the event of casualty. In this instance it is evident to your committee that proper surgical skill and aid was not given the petitioner; and this is supported by eminent surgeons who have since examined the wounds. His case, therefore, forms an exception to the general rule.

Under all the circumstances your committee think the petitioner entitled to an increase of pension, having been mutilated in performing labor foreign to that he was enlisted to perform, and they are of opinion that twenty-five dollars per month a very moderate compensation for the loss he has suffered. No money compensation could be made the equivalent for such mutilation as the petitioner has sustained.

Your committee, therefore, recommend the following bill, and ask its favorable consideration.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 452.

LT. CH. W. PLACE—WIDOW OF.

[To accompany Bill H. R. No. 671.]

APRIL 20, 1860.

Mr. FOSTER, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom were referred the petition and papers of Adelia C. Place, widow of Charles W. Place, late of the United States navy, asking a pension, report:

That your committee have given this application full care, and think the prayer of the petitioner ought to be granted.

It appears from the evidence that the husband of the petitioner, Charles W. Place, was a lieutenant in the United States navy, and was on board the sloop-of-war Germantown, ordered to the East India station in August, 1857. It further appears that on the 15th of December of same year Lieutenant Place was engaged, under the order of his superior officer, "in transporting the two lower guns from forward, aft, for the purpose of trimming and easing the ship," and while so engaged the ship gave a lee lurch, which caused one of the guns to slip, catching the left foot and ankle of Lieut. Place between two of the trucks of the guns, cutting and inflicting deep wounds. In consequence of these wounds, within a month subsequent it became necessary to amputate the leg, mortification having supervened; Lieut. Place survived this operation but one day, and died on the 9th of January, 1858.

Lieut. Place is highly spoken of as an efficient and useful officer, and having thus lost his life in the service, and in the line of duty, leaving unprovided for his widow and three children, your committee think the petitioner presents a proper claim for relief, and they therefore report the accompanying bill, and ask its favorable consideration.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT. No. 453.

FREDERICK PERRIGO—WIDOW OF.

[To accompany Bill H. R. No. 672.]

APRIL 20, 1860.

Mr. FOSTER, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Mary Perrigo, widow of Frederick Perrigo, asking an increase of pension, make the following report:

Your committee have examined the application of the petitioner, Mary Perrigo, and they find that her husband, Frederick Perrigo, was a soldier of the revolution, and was also a soldier in the late war with Great Britain. It appears that she applied for and obtained a pension as his widow, under his service as a revolutionary soldier. This pension was only $30 per annum. It further appears that her said husband in his lifetime obtained a pension of $96 per annum, as an invalid soldier of the war of 1812, and is now dead.

The petitioner, his widow, asks that her pension be now increased from $30, which she now receives, to $96. She is very old, and totally blind, and your committee think her claim a meritorious one, and ought to be granted. They therefore report the accompanying bill increasing the same to $96 per annum, and ask the favorable consideration of the same.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 454.

WM. M. S. RILEY.

[To accompany Bill H. R. No. 673.]

APRIL 20, 1860.

Mr. FOSTER, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom were referred the petition and papers of William M. S. Riley, asking a pension, report:

That your committee have examined the evidence with care, and find that the petitioner, William M. S. Riley, was a private in the company of Maryland volunteers, commanded by Capt. Kenley, and that he served with the army in the war with Mexico.

It appears from the evidence that he was shot on the front of his right leg and was ridden over by a dragoon, and taken to the hospital, whence he was subsequently discharged for disability.

It appears that the wound on the shin bone reopened, and has become an incurable ulcer, remaining to this day, with no hope of cure. The certificate of the army surgeon, Dr. Pope, certifies that the leg is now in a worse state than when he saw the wound at the time it was inflicted, and that the petitioner is unable to perform his usual manual labor.

Your committee therefore think he is entitled to a pension, and report the accompanying bill, and ask its favorable consideration.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 455.

EDWIN W. JONES.

[To accompany Bill H. R. No. 674.]

APRIL 20, 1860.

Mr. FOSTER, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom were referred the petition and papers of Edwin W. Jones, asking a pension, report:

That your committee have examined the proof, and think the petitioner, Edwin W. Jones, entitled to a pension. It is proven that he was a private in company B, fifth infantry, United States army, in the late war with Mexico. It appears from the certificate of Dr. Coolidge, the army surgeon, that on the 20th day of April, 1848, the petitioner was honorably discharged on account of general debility. It appears that he was attacked with diarrhœa, which became chronic, and up to the 29th of December, 1859, has continued upon him, and by the proof of three respectable surgeons he is now perfectly prostrated from the effect, and unable to perform manual labor. The proof shows that there is every probability the disease will continue during life.

Your committee being satisfied that the petitioner acquired his disease in the line of his duty, report the accompanying bill, and ask its favorable consideration.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 456.

SPARHAWK PARSONS.

[To accompany Bill H. R. No. 675.]

APRIL 20, 1860.

Mr. FENTON, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom were referred the petition and papers of Sparhawk Parsons, have examined the same, and report:

It appears that the petitioner was a lieutenant commandant of marines on board the privateer ship "General Armstrong," commanded by Captain John Sinclair, in the war of 1812; that he volunteered at Charleston, South Carolina, in the month of June, 1814, and started immediately on a cruise in search of the enemy, and continued in actual service about four months, and was honorably discharged at Wilmington, North Carolina, in the month of September, 1814; that while he was thus engaged in the service, and in the line of his duty on board said ship, he was wounded by the bursting of a gun in the engagement with a British vessel off the coast of the Cape de Verde islands; that the injury continued to increase, at times causing very great pain as the arteries continued to enlarge. He continued to suffer until 1818, when Dr. Valentine Mott, of New York city, on examination, told him that a very dangerous aneurism was forming in each leg, and advised an operation, the taking up of the arteries, which was done by Dr. Mott. But that did not effect a cure. He was compelled to use crutches for twenty-eight years, until the 9th of December, 1847, when his leg was amputated by Dr. Lewis A. Sayre, of New York. That up to the time of his wound in said battle he had been a hearty, rugged man; that he has never received any injury or wound upon either of his legs subsequently to the one sworn to.

He swears that he made an effort, several years ago, to obtain a pension, but was discouraged by learning that the ship's papers were destroyed. He further swears that he knows of no living officer or private by whom he can prove his said injury in said battle, as he was a resident of Massachusetts, and the ship's crew and marines were gathered at Charleston, South Carolina.

The affidavits of Dr. Valentine Mott and Dudley P. Arnold are appended, who testify that the appearance of the wound indicated

that the injury was received as he alleges. Dr. Mott corroborates what he says about the operations performed on his leg.

Application was made to the Pension office in 1857 for a pension for petitioner. The Commissioner rejected the claim for the following reason, which we copy from his original letter:

"The application of Sparhawk Parsons for pension on account of disability incurred by him in action while attached as a lieutenant to the private armed vessel 'General Armstrong,' has been placed on file. The pensions granted to privateersmen were payable *exclusively* out of the *privateer pension fund*, and that fund having been exhausted many years ago, there is now no law in force under which applications from that class can be allowed.

"G. C. WHITING,
"*Commissioner of Pensions.*"

Your committee, therefore, in view of his services to his country and the great expense he has been at, and the great pain and affliction he has borne for forty-six years, and although not sustained by any other direct evidence except his own, the affidavits and certificates of the distinguished Dr. Valentine Mott and Dr. Arnold, render it more than probable that he received the injury as he testifies, concur in recommending the accompanying bill for his relief.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 457.

JOSEPH PIKE.

[To accompany Bill H. R No. 676.]

APRIL 20, 1860.

Mr. FOSTER, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Joseph Pike, of New Hampshire, made the following report:

From the petition and evidence in this case it appears that the petitioner enlisted in the service of the United States as a private on the 11th day of March, 1813, at Hebron, New Hampshire, for during the war, and served faithfully until he was honorably discharged at Portsmouth, New Hampshire, on the 11th day of April, 1815; his discharge is signed by Eben Way, captain of the fourth infantry, superintending recruiting service, and D. Parker, adjutant general; that petitioner, after his enlistment, served under Captains Loving and Bigelow, in the twenty-first infantry, but in the season of 1813 was transferred to Captain John Binney's company, fourth regiment of infantry; that on or about the first of December, 1813, while engaged in the line of his duty, under the direction of Captain Binney, in hewing a stick of timber for the United States hospital, then in course of erection at Plattsburg, New York, the axe slipped and cut off his great toe and the next one to it of his left foot; that the great toe is cut off so as to take a portion of his foot, and the toe next to it is cut off close to the foot; whenever he uses his foot in walking it increases his lameness in his left ankle, which swells whenever he uses it, and is much weaker than his other ankle; that, in consequence of said wound, he has lost the use of his foot in a great measure, and for eighteen months thereafter was unable to wear a stocking or shoe upon his foot, and ever since he received said wound he has been at least one-half disabled thereby from obtaining his subsistence from manual labor, and his present disability proceeds from said injury and from no other cause; that he was in the hospital at Plattsburg, New York, about two months after the injury, when he was removed to Burlington, Vermont, where he remained in hospital until March, 1814, when he received a furlough and went home to Hebron, New Hampshire, to recruit; he was obliged to walk on crutches for more

than a year, and, when peace was declared, he went to Portsmouth, New Hampshire, to receive pay for his services and be discharged with other army invalids. The rolls to the first of July, 1814, show that he was "on furlough since 18th of March, 1814, sick;" the affidavit of Charles F. Binney proves that his father, Captain John Binney, died in Boston in 1838.

David Fowler, of Alexander, New Hampshire, testifies that he was attached to the twenty-fifth regiment of infantry, and discharged at the same time and place with petitioner, who was then lame; witness served with petitioner under Lieutenant Loving, and left petitioner at Little York; that petitioner was lame at the date of his discharge from wounds received in the army.

Enoch Brainard, of Alexander, New Hampshire, testifies that petitioner, who was a soldier of the war of 1812, came home on furlough from said service directly to the house of witness, in Bridgewater, and tarried there some time; and that he was very lame in one foot, having lost two toes, and has been lame ever since in consequence of said wound in the foot.

David Noyes, of Hebron, New Hampshire, aged 65 years, in his deposition of December 8, 1856, testifies that he was well acquainted with petitioner, who was a citizen of said town from 1816 to 1836, and knew of his enlisting and going into the army in the war of 1812; after an absence of about one year, he returned lame, having, as witness understood at the time, been wounded in his left foot while on duty as a soldier in the army at Plattsburg, New York; witness knew petitioner intimately for several years after he came from the army, and has seen him frequently from that time to this, and knows that he has always been lame in consequence of the wound received as above stated, and witness has no doubt his lameness was caused by the wound received while in the army as aforesaid.

William Cross, of Groton, Vermont, in his affidavit of October 8, 1850, says that he and Pike served together in Lieutenant Loving's company; they marched to Burlington and Sackett's Harbor; that petitioner remained in the army until he was wounded by having several of his toes cut off; petitioner and witness were discharged together at Portsmouth, New Hampshire, April, 1815.

Moses Chase, of Campton, Grafton county, New Hampshire, aged 71 years, in his deposition of April 19, 1856, says that he was a soldier in the war of 1812; that he enlisted at Dover, New Hampshire, on the 16th of May, 1810, for five years, in Captain Paul Wentworth's company, in the fourth regiment, commanded by Colonel Boyd; that in May, 1812, he went to Burlington, Vermont; then in 1813 deponent went to Plattsburg, New York, where he first became acquainted with petitioner, Joseph Pike, who then belonged to a company of infantry commanded by Captain John Binney. Witness was knowing to said Pike's being wounded; thinks it was in the fore part of December, 1813, said Pike was hewing a stick of timber for the hospital, when he cut off his great toe and the next one to it. Deponent was present and saw his foot dressed, and saw him frequently while he was in the hospital, until the month of February following, when he was removed to the hospital in Burlington aforesaid, as deponent

understood, and he has not seen said Pike until recently, when deponent recognized him at first view.

Samuel Rogers, a justice of the peace and surgeon, of Grafton county, New Hampshire, before whom the foregoing deposition of Moses Chase was taken, certifies to his credibility as a witness, and adds: "I have examined the within-named Joseph Pike's foot, and find it as described by the deponent within named."

It appears that petitioner was by occupation a cooper, but has been unable to work much at his trade in consequence of disability. He has obtained his subsistence by cultivating a small piece of land with the aid of his family, and his habits have been temperate. John Rogers, the magistrate before whom petitioner's declaration for a pension was taken on the 15th day of August, 1856, says he is acquainted with declarant, and knows him to be the person he represents himself to be, and that he is reputed, in the neighborhood in which he resides, to have been a soldier of the war of 1812, and to have been wounded as he states; and he, the magistrate, concurs in that opinion. Petitioner's application for a pension appears to have been made February 26, 1851; his petition to Congress is dated December 25, 1857. The medical testimony in the case is as follows:

Robert Burns, M. D., of Plymouth, New Hampshire, in his deposition of December 1, 1851, says that he is well acquainted with petitioner, and has this day examined his left foot. The great toe and the toe next to it are wholly gone; the last-named toe is cut off close to the foot, and the great toe is cut off so as to take a portion of the foot with it. This wound materially affects the other toes, and deprives petitioner of their use; and, in the opinion of deponent, this wound occasions a disability amounting to one-half, according to the rule of the Pension department in determining the degree of disability. Deponent has known petitioner for about twenty years.

Samuel Rogers and Samuel Long, surgeons, of Plymouth, New Hampshire, in their sworn certificate of August 16, 1856, state that by satisfactory evidence and accurate examination it appears that on or about the first of December, 1813, being engaged at work hewing timber for the United States hospital, then in the course of erection at or near Plattsburg, New York, the said Joseph Pike received a wound or injury in his left foot by means of an axe which he was using, which slipped and cut off his great toe and the toe next to it. The great toe is cut off so as to take a portion of his left foot, and his toe next to the great toe is cut off close to the foot, which wound materially affects the other toes, and deprives said Pike of their use, and materially affects his whole foot, depriving him in part of its use, and he is thereby not only incapacitated for military duty, but, in the opinion of the undersigned, (surgeons,) more than one-half disabled from obtaining his subsistence from manual labor; and his present disability, in our opinion, is the result or effect of the aforesaid injury, and proceeds from that and no other cause. We are also of opinion that said Joseph Pike has been one-half disabled, in consequeuce of said injury, ever since he received said wound, and that said disability has been, and is now, a permanent disability. The witnesses

are certified as credible, and the surgeons to be regular practicing physicians and surgeons of Plymouth, New Hampshire, and reputable in their profession. The petitioner's claim was refused at the Pension office on the ground that his evidence was insufficient. Your committee have carefully examined the testimony, and are satisfied that petitioner has fully sustained his claim, and therefore report a bill allowing him a pension of four dollars per month.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 458.

LAND TITLES IN THE LATE DISPUTED TERRITORY OF MAINE.

[To accompany Bill S. No. 191.]

APRIL 13, 1860.

Mr. WALTON, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred Senate bill No. 191, "*to provide for the quieting certain land titles in the late disputed territory in the State of Maine, and for other purposes,*" *have carefully considered the same, and report:*

That previous to 1832 and to this time, persons named in this bill were owners of 32,040 acres of land, in the towns of Plymouth and Eaton, in the State of Maine, the titles thereto having been granted in 1807 and 1808, by the State of Massachusetts, when these lands were within her undisputed jurisdiction. It appears that from 1827, by request of the United States, the jurisdiction of Maine over these lands was partially, and from 1831 to 1839 wholly, suspended.—(See Appendix A.) That in consequence of such suspension, and while in fact New Brunswick had placed an officer of her own in charge of the lands, styling himself "justice of the peace for the county of Carleton," (in New Brunswick,) and "warden of the disputed territory," sundry persons entered upon the lands without the consent of the owners, and removed the most valuable timber therefrom, for which a duty of eight shillings per ton was exacted by this New Brunswick "warden;" and that 8,430 acres in these townships were actually occupied and improved by such persons for more than six years before the date of the treaty of Washington, (1842,) by virtue of which the lands again fell within the jurisdiction of Maine. These persons are still in possession of the 8,430 acres so occupied and improved, and claim that, by the fourth article of the treaty of Washington, they have acquired the right to a "release of the title thereto." The proprietors under the Massachusetts grant consent to execute a release of their title to the persons in possession on receiving from the United States fair compensation for the land and timber; and the proprietors in addition claim compensation for the loss of timber on the remaining 23,610 acres which are still their property.

Release of title to land.

The first and second sections of the bill provide payment for the 8,430 acres of land, including the timber taken therefrom, being that part of the Eaton and Plymouth grants which was occupied and improved by the persons now in possession, who claim a release of the title thereto by virtue of the fourth article of the treaty of Washington, 9th of August, 1842. This article is in these words:

"All *grants of land* heretofore made by either party, within the limits of the territory which by this treaty falls within the dominions of the other party, shall be held valid, ratified and confirmed *to the persons in possession under such grants*, to the same extent as if such territory had by this treaty fallen within the dominions of the party by whom such grants were made; and *all equitable possessory claims*, arising from *a possession and improvement* of any lot or parcel of land *by the person actually in possession*, or *by those under whom such person claims*, for more than six years before the date of this treaty, shall, in like manner, be deemed valid, and be confirmed and quieted *by a release, to the person entitled thereto, of the title* to such lot or parcel of land, so described as best to include the improvements made thereon; and in all other respects the two contracting parties agree to *deal upon the most liberal principles of equity with the settlers actually dwelling* upon the territory falling to them, respectively, which has heretofore been in dispute between them."

Looking solely to the fairest and most obvious meaning of the article, there seems to be a single purpose, to wit: *to quiet all the settlers* on the lands to which there had been conflicting claims of jurisdiction, whether the settlers held by grants, by possession and improvement for six years, or by whatever claim might grow out of possession for a shorter term; and to do all this by a single rule, clearly expressed and absolute, to wit: *possession*.

Laborious investigation and discussion of the history of the negotiation, (see Appendix A, B, C,) and of the practical construction put upon the treaty by the legislatures of Maine and Massachusetts, (Appendix D and F,) by the courts of Maine, (Appendix E,) and by Congress itself in the case of Josiah S. Little, (11th U. S. Statutes, 472,) have confirmed that impression, and led to the following conclusions:

1. That the fourth article of the treaty *confirms all grants*, and *quiets all equitable claims*, to the *persons in possession* at its date, and to those persons only; the design being to prevent litigation that would grow out of grants and claims springing from the conflicting jurisdictions and laws of Maine and New Brunswick, and to satisfy all persons whose national relations were changed by the conventional boundary line.

2. That citizens of New Brunswick, who had been in possession of lands in Plymouth and Eaton townships for six years and improved them, are entitled, by the treaty, "to a release of the title" to so much of the lands as will best embrace their improvements.

3. That the proprietors of these townships, under the Massachusetts grant, whose lands have been thus taken by the federal government for an important public purpose, are entitled to just compensation.

4. That the settlers on the lands have a right to ask and expect of Congress an act to perfect their claims under the treaty, inasmuch as, by the very terms of the fourth article, the federal government was pledged, as one of the contracting parties, to execute that article "upon the most liberal principles of equity."

A majority of the committee therefore believe that the parties named in the Senate bill have a clearly just claim, which has already been too long delayed, and they regret that this decision has not been unanimous. It has been our duty to the government, however, to consider all objections, and now it is our duty, to the claimants at least, to reply to all that we deem material.

It has been generally agreed in the committee, perhaps unanimously, that the treaty was intended to cover all grants and possessory claims on the public or unappropriated lands of Maine and Massachusetts. Indeed these States have never doubted that; but on the contrary, immediately after the ratification of the treaty, in 1843–'44, a joint commission was appointed, with power to set off to the claimants in possession all lands claimed under grants from New Brunswick—all lands claimed by more than six years' possession and improvement, and all lands claimed upon mere settlement; and the land agents were required to execute, and did execute, titles to land owned by Maine and Massachusetts to all these classes of claimants.—(Appendix D.) In 1844 the commissioners for the first time reached the townships of Eaton and Plymouth, where the lands were private property, under grants given by Massachusetts for patriotic and educational purposes, at a time when her title was undisputed, and where a part of the land was claimed, under the treaty, by citizens who had come in from New Brunswick, and were then, as now, in possession. The action of the commissioners was thus stated in their report, which was accompanied by a list of the claimants:

"But the undersigned [commissioners] were of opinion that the fourth article of the treaty *ought not* to be construed to extend to embrace those lands which had been previously granted by the States to corporations or individuals, so as to divest the title from such grantees and give it to persons who had held by mere possession more than six years before the date of the treaty, and that the resolves aforesaid had conferred no power upon the commissioners to set off lots to the settlers upon those townships. Yet the undersigned, at their earnest request, have taken their statements and the proof of their claims, and respectfully submit *whether some provision should not be made further* by the legislatures of the two States, *or by Congress.*"

It is objected by a minority of the committee that the fourth article of the treaty was not intended to operate on private property, and the above quoted opinion of the commissioners in 1844 is held to be conclusive on that point. We do not concur in this view of the action or the opinion of the commissioners. For the first time they had entered upon private property, and were asked to set off a portion of it

to persons holding by possession adverse to the title. They saw at once that such an act would give rise to a claim upon somebody, by the proprietors, to compensation for private property so set off. It was quite natural, quite prudent, indeed, for the commissioners to endeavor to avoid any such claim against the States which had made them agents, and it is fairly presumable that they entered the best possible plea for declining to set off the lands. What is it? Not that the treaty *does not* embrace private lands; no, but that, in their "opinion," it "*ought not*" to be so construed. Not that *the treaty does not* give rights to the persons in possession; no, but that the resolves under which the commissioners were acting did not give them the power to ascertain those rights—an opinion which is questionable, to say the least, though it is true that the land agents could give deeds for public lands only.—(See resolves in Appendix D.) And finally, they are so strongly impressed with the justice of the claims of the persons in possession, that they conclude to take the proofs of their claims, and "respectfully submit whether some provision should not be made for them by the legislatures of the two States, *or by Congress.*" That is the very point we have been carefully examining, and we think it is properly settled by the bill before us.

But it is plain that the fourth article of the treaty *does* embrace private property. The first clause, indeed, embraces nothing else. It provides that where persons claim under conflicting grants to the same land, the title shall be vested in the claimant who is *in possession.* Though the grantee, who happened to be out of possession at the date of the treaty, had acquired private property from Massachusetts between 1792 and 1827, when both the American title and jurisdiction were undisputed by Great Britain—though the subsequent grant was obtained by the adverse party from New Brunswick, between 1832 and 1839, when by request of the federal government the jurisdiction of Maine was temporarily suspended, and though the land fell by the conventional line of 1842, in Maine, where everybody conceded that it belonged at the date of the Massachusetts grant—yet the treaty divests the older title to private property thus lawfully acquired, and gives that property to the New Brunswick man, who is in possession under a subsequent and, in fact, unlawful title.

We have discovered no good reason for a distinction (except in the *measure* of the claims, as provided in the treaty) between claims to the property of Maine or Massachusetts and property of their citizens, or between claims founded on conflicting titles, where each was acquired with equal good faith, and equitable claims founded on possession and improvement. As to grants, *priority* might have been the treaty rule, or it might have been provided that the grants of the government within whose jurisdiction the land fell by the treaty should determine the title, yet neither of these rules was adopted. But there *was* a good reason why *possession* was made the absolute rule, and that reason applies equally to every class of claims, whether through grants or through possession and improvement, and to each class of property, whether public or private. Indeed, it may well be said that *all* the land was private, in respect to the parties to the treaty, since the ungranted lands in Maine were the property of Maine

or Massachusetts, and not of the United States. As already stated, the history of the negotiation and the subsequent action of Maine and Massachusetts all go to show that the main purpose of the fourth article was *to quiet the persons in possession;* hence *possession* was the only rule for the settlement of all classes of claims. The conventional line set off American citizens to New Brunswick, and British citizens to Maine, and those citizens were in possession of lands derived in good faith from their respective governments, and were relying upon those governments for protection. Some derived titles from grants, and others derived equitable claims from occupation and improvement. We know that citizens of New Brunswick occupied and improved lands in Eaton and Plymouth, under the very eye of the "warden" sent there by New Brunswick to maintain her jurisdiction, and we also know that this "warden" exacted a duty for timber, and seized and sold the timber itself as the property of New Brunswick when the duty had not been paid. Surely it cannot be maintained that the settlers in Eaton and Plymouth would have had no equitable claims upon New Brunswick had the land ultimately fell within her limits. Now, we know more: we know that New Brunswick did not *enter* upon Plymouth and Eaton until the United States had suspended jurisdiction in 1827, and could not have held her jurisdiction nor maintained her warden over these lands between 1832 and 1839, *had not the federal government suspended the jurisdiction of Maine.* Maine, in fact, was prepared to maintain her rights by force, but was prevented by the federal government. When, therefore, these lands again fell to Maine by the conventional line, and the Massachusetts grants were thus revived, it was eminently fit, eminently just, eminently necessary, indeed, for the peace of that community that the federal government should assume all the responsibilities that attached to New Brunswick, *and engage, as by the treaty we think it did* engage, to quiet the settlers in all their claims, whether by grants or possession. The words of *the second clause of the fourth article seem* to embrace *private* lands—*all lands. By no good rule of construction*, at least, can they be made to *exclude* private lands. *The provision is, that* "all equitable possessory claims shall in like manner [*i. e.*, like grants] be deemed valid, and be confirmed and quieted *by a release* to the person entitled thereto, *of the title* to such lot or parcel of land, so described as best to include the improvements made thereon." The words "release of *the title*" are certainly broad enough to carry the improved land against all adverse claimants, whether Maine, Massachusetts, or their citizens. If it had been the purpose of the treaty to quiet claims to public lands only, we are confident Mr. Webster would have used terms altogether more felicitous for the purpose.

If any doubt remains, growing out of an opinion of the first commissioners, given for prudential reasons, we think that doubt is removed by the subsequent decision of the supreme court of Maine, and the acquiescence of the legislatures of Maine and Massachusetts, and of the 34th Congress.

Josiah S. Little derived title from a Massachusetts grant to a half township, lying partly in Maine and partly in New Brunswick, according to the conventional line of 1842. On this land was a tenant,

(Watson,) who claimed by a subsequent grant from New Brunswick, and who was in possession at the date of the treaty. The titles of the parties were tried in the supreme court of Maine, in the case of Little *vs.* Watson, reported in 1852, in 32d Maine Reports, page 224. The very point that the treaty does not embrace *private* lands was raised in this case, and it was overruled. Judgment was rendered for the tenant Watson, under his New Brunswick grant, it being held (on the authority of the United States Supreme Court, in 2d Peters, page 314, and 7th Peters, page 51) that the treaty was not executory, but operated *proprio vigore* to take away the title of Little, who was thus left, in the language of the court, to "seek compensation for the loss of his land from the justice of his country."—(Appendix E.) August 18, 1856, Congress passed an act compensating Little for that part of his lost land which fell in Maine by the treaty; and it is understood that Massachusetts paid him for that part of the land which fell within New Brunswick, the latter undoubtedly having been done, for the reason that the United States, as required by the fifth article of the treaty, had paid Maine and Massachusetts for all of their land that had been conceded to New Brunswick.—(Appendix B.)

We concede that the second clause of the fourth article, providing for possessory claims, is simply executory, so far as respects *the mode of procuring releases* of the outstanding title to improved land; but we also think it bars proprietors from ejecting persons who are in possession according to the terms of the treaty; and we are, therefore, not surprised to learn that, in a case arising at *nisi prius* in Aroostook county, Judge Cutter, of the supreme court of Maine, promptly applied the principle of Little's case to a possessory claim, and sustained the party in possession against the grantee. From that decision no appeal was taken, as it was thought by all parties to be the rule of the treaty.

In April, 1854, the legislature of Maine accepted the judicial interpretation of the treaty in Little's case, and appointed a second board of commissioners to set off the improved lands in Eaton and Plymouth to the persons in possession, and notified the President of the United States that Maine would procure a release of the titles, or give public lands in exchange, "whenever Congress shall be ready to make to the State suitable indemnity."—(Resolutions, Appendix F.) The commissioners performed this duty, and reported on the 5th of March, 1855; the claimants are now in possession of the lands so set off, and it only remains for Congress to provide, in some mode, for a release of the title by the Massachusetts grantees. We think Congress cannot require releases without giving just compensation.

The second objection to the bill is that the parties in possession have simply *an equitable claim*, to be judicially determined under the possessory or "betterment" laws of Maine or New Brunswick; and this point has been so far pressed as to conclude, on the supposition that New Brunswick has no possessory laws, and because aliens can acquire no possessory claims in Maine, that therefore the persons in possession *have no rights at all*, and the land must revert to the Massachusetts grantees. This theory leaves a large class of meritorious settlers unprovided for; nay, more: it probably sacrifices the improvements they

have been making for the last twenty-four years. Claimants under grants are to have their land by possession merely, without regard to the legality of the grants under the laws of the country where they fell by the treaty; mere settlers are entitled to the most liberal equity, without regard to any laws at all; and yet claimants by possession and improvement, for more than six years at the date of the treaty, and now for almost a quarter of a century, are remitted to laws of Maine or New Brunswick, if laws there are to meet their case, and with a strong probability that such laws will sacrifice both their land and their improvements. We respectfully submit, that if the possessory clause of the fourth article gives no rights, or none that cannot be judicially determined outside of the treaty, then there was no necessity for that clause. If, however, it be construed so that *all* parties claiming lands are to stand in court upon the laws of their respective governments, then there is a conflict that *cannot* be judicially determined. By Maine laws, the Massachusetts grant is a bar to all possessory claims by citizens of New Brunswick, and the settlers will therefore lose their improvements; while, on the other hand, by New Brunswick laws, the Massachusetts title is not worth the paper on which it was written, and therefore the Massachusetts grantees must lose their land. Even if there are no possessory laws in New Brunswick, still, inasmuch as the Massachusetts grant is void, nobody could eject the New Brunswick men in possession, unless it be New Brunswick herself. We do not believe it was the purpose of the treaty either to leave New Brunswick a landholder in Maine, or to deprive the settlers of that equity to which they are entitled by more than six years' possession and improvement.

We agree, however, that the claimants to the improved lands have *equitable claims only;* but we think the treaty clearly defines, awards, measures, and guarantees the equity, in language worthy of the preeminent lawyer and statesman who drew it.

First, we have a *definition*, to wit: "all equitable possessory claims, *arising from a possession and improvement of any lot or parcel of land.*"

Next, we have a *designation* of the person in whom the equity is, to wit: "*by the person actually in possession, or by those under whom such person claims, for more than six years before the date of this treaty.*"

Next, we have *the mode* in which the equity is to be secured, to wit: "*shall in like manner (like grants) be deemed valid, and be confirmed and quieted by a release, to the person entitled thereto, of the title to such lot or parcel of land.*"

Next, we have *the measure* of the equity, to wit: "*so described as best to include the improvements made thereon.*"

And finally, we have *the guaranty* of the federal government, which is in terms binding upon that government, as one of the contracting parties, to wit: "*and in all other respects the two contracting parties agree to deal upon the most liberal principles of equity with the settlers actually dwelling upon the territory falling to them, respectively, which has heretofore been in dispute between them.*"

We have thus given the article of the treaty entirely and consecutively, so far as it relates to possessory claims, and stated the legitimate and full effect of every part of it.

A third objection is that the territory was in dispute, and that persons acquiring titles or claims while the territory was in dispute, must have done so subject to the risks of a final settlement of the question of jurisdiction. It is sufficient to say that, if this view is correct, the fourth article of the treaty had no purpose, and can have no effect. Had it been omitted, all parties *would* have been left precisely as this objection presupposes. The article is there, however; it is part of the supreme law of the land, and we think we are bound to interpret it so as to accomplish all the beneficial purposes for which it seems historically, by its terms, and by all subsequent judicial and legislative interpretations, to have been designed; these were to confirm all grants, and quiet all claims to persons in possession of the land at the date of the treaty. Moreover, the territory was *not* in dispute when Massachusetts made the grant; the United States suffered New Brunswick to *put it* in dispute from 1827 to 1842, and *to put* these possessory claims upon it. The treaty restored the Massachusetts grants, and it is for the United States to discharge the claims which arose from its act.

Finally, it is asserted truly that Maine required the fourth article as a condition precedent to her assent to the treaty; and therefore it is claimed that Maine, and not the federal government, is bound to execute it. Maine *has* executed it, with the knowledge and acquiesence of the federal government, in respect to her own lands, and *has* executed deeds to all the claimants thereon, including those who were merely settlers at the date of the treaty. It is due to Maine and Massachusetts here to say, that of all the parties bound by the treaty, they alone have complied in good faith with all the conditions which Maine imposed upon her assent.—(Appendix B.) The engagements of Great Britain in respect to the timber fund in the treasury of New Brunswick, and to the navigation of the St. John, have been violated by Great Britain, and neglected by the United States. To this day they are unexecuted. Maine has also executed the treaty in regard to the claimants in Eaton and Plymouth, so far as to ascertain and set off their claims upon the private property there; but she refuses to provide for releases of the title, or to deed other lands in exchange, until the federal government shall have assumed the responsibility. Thus the treaty rights of the parties in the Senate bill have not been secured. For eighteen years they have been seeking relief, and still, though their rights have been clearly ascertained and often acknowledged, they are as completely *unexecuted* as they were at the date of the treaty. Admitting, however, for the purposes of the argument, that Maine ought to be held responsible for the fourth article, yet, by the very terms of the article, the federal government was bound to execute every provision of it, and "to deal upon the most liberal principles of equity with the settlers actually dwelling upon the territory falling to them." We think the claimants have a right to ask relief, and the federal government is pledged to give it. If Maine, or Maine and Massachusetts, ought to be held to this responsibility ultimately, they are now claimants under the treaty, for land and expenses, to the amount of $89,000, a part of which claim is of the same character as that of other claims of those States which have

already been acknowledged and paid by the federal government. It will, therefore, be within the power of Congress hereafter to charge the amount of the pending bill, or such part as may be proper, upon that claim.

Having thus fully considered the objections to the claim for lands, a brief statement of the claim for timber destroyed will conclude this report.

Timber depredations.

In respect to depredations upon the timber on other lands in Eaton and Plymouth, not included in the "possessory" claims, and for which compensation is provided in the third section of the bill, your committee adopts the language of a report made in behalf of the House Committee of Claims of the thirty-fourth Congress, by Mr. Knowlton, and approved, in behalf of the committee of the thirty-fifth Congress, by Mr. Maynard, to wit:

"It further appears, from the testimony in this case, that the valuable pine timber upon the Eaton grant and the Plymouth township was subjected to extensive depredations, commencing about the year 1833; that those depredations were committed by the citizens of New Brunswick, and that the owners were disabled from protecting their property in consequence of an arrangement entered into between the United States and Great Britain in 1832, by which the jurisdiction of Maine over this part of the so-called "disputed territory" was agreed to be suspended until the final termination of the controversy. While Maine did not admit the authority of the United States to bind her by any such arrangement, it appears that she did, in deference to the wishes and solicitation of the United States, forbear to assert her jurisdiction, even against trespassers, until the year 1839. It is for the losses of timber suffered during this period, from 1832 to 1839, and in consequence of an arrangement of this government suspending the jurisdiction of Maine, that the parties injured now ask compensation.

"From public considerations connected with the peace of the country, their property was placed out of that protection of the laws which is the common right of all our citizens, and their claim to be indemnified for resulting losses would seem to be well founded."

In addition, we will observe that, in the fifth article of the treaty, it was agreed that a fund in New Brunswick, arising from the timber taken from the land while New Brunswick exercised jurisdiction, should be delivered to the United States, to be paid over to Maine and Massachusetts. Had this article been enforced by the United States, and the money been exacted and paid over, it might be said, and we think Maine at least would agree, that claims for timber depredations on private lands should be charged to that fund. It appears, however, that although New Brunswick has acknowledged a cash fund, arising from Maine lands, amounting "in full" to £8,417, and exclusive of expenses charged to that fund, to £6,467, and also bonds for £2,495 given for timber; yet the federal government has never exacted the money from Great Britain, nor paid a dollar to Maine and Massachusetts. The fifth article was also one of the conditions precedent to

the assent of Maine to the treaty, and she has a right to demand either that the treaty shall be enforced, or payment shall be assumed by the federal government. In any event, the loss of timber is chargeable to the action of the United States, ten years previous to the treaty, and the owners of the property ought not to be deprived of their rights, or further delayed, by any questions growing out of the treaty between the United States and Great Britain, or between the United States and Maine. The owners of the timber were not citizens of Maine, nor were they parties to the treaty. Independent of the treaty, their claim is justly chargeable to, and ought to be paid by, the federal government.

Rule of compensation.

In fixing the compensation, your committee has been guided by a full statement of facts and valuations made from personal examination by N. C. Towle, esq., who was a confidential agent, appointed by authority of the Senate, to gather and report the facts in respect to these claims. His report, made to the Senate Committee on Claims, December 1, 1856, is referred to as a part of this report.—(Appendix G.) From this report it appears that the value of the 8,430 acres covered by the "possessory" claims, with the improvements and an allowance for timber converted, was, on a moderate estimate in 1856, within a fraction of eight dollars per acre. Only half that sum is allowed in the bill, this being the value fixed by previous committees. For depredations on 23,610 acres of the lands not covered by "possessory" claims under the treaty, the rate allowed is one dollar per acre, and that sum is, as Mr. Towle observes, "more than fifty per cent. below the value, as stated by the witnesses whose testimony was taken."

These claims have been repeatedly examined by committees of both branches of Congress, and uniformly reported favorably. The majority of your committee believe that any further delay in granting relief will be a denial of justice, and too probably a severe hardship to many of the parties. The persons in whom the Massachusetts title remains acquired their rights by purchase in good faith, and have been owners for nearly thirty years; four of them are, each, over eighty years of age, and the two ladies named in the bill particularly need the relief they ask. We therefore recommend that the Senate bill be passed in concurrence.

APPENDIX A.

THE JURISDICTION OF MASSACHUSETTS UNDISPUTED WHEN PLYMOUTH AND EATON TOWNSHIPS WERE GRANTED.

Governor Smith, of Maine, to Mr. Livingston, Secretary of State, November 10, 1831.

"I beg to refer to the accompanying copy of a letter of John G. Deane, an agent appointed by this State to gain information in relation to this territory. By the facts there stated, it appears that the actual possession and jurisdiction of Massachusetts since 1792, and of Maine, since her separation, has been greatly more extensive and continued than that of the provincial government. After the true St. Croix and its sources were ascertained in 1798, the British ceased to exercise any acts of jurisdiction over the settlement at Madawaska, or other parts of the territory, since disputed; and for twenty years, and until the commencement of the controversy respecting the boundaries, their jurisdiction was not resumed. But since that time, and subsequently to 1827, *when it is supposed the arrangement before alluded to was made*, the British, for the first time, appointed magistrates in this territory, who acted as such, granted timber licenses, and organized militia companies, issued legal process against American citizens, have interfered with the settlers on the Aroostook," &c.

Mr. Deane to Governor Smith, November 2, 1831, (*referred to above.*)

"In 1824 Sir Howard Douglass arrived, and took upon himself the government of New Brunswick, as its lieutenant governor." "In 1820 and 1821 three or four persons went up and established themselves on the banks of the Aroostook. Several from the province of New Brunswick and the State of Maine, in the following years joined them. After the commencement of Sir Howard Douglass' administration, licenses were granted to cut timber in this region also, and civil processes were served upon the inhabitants. *On this river they had not, prior to his administration, exercised any act of jurisdiction whatever*, that region adjoining the line having, in fact, been surveyed and granted by Massachusetts, seventeen years before, to the town of Plymouth and General Eaton."

SUBSEQUENT SUSPENSION OF THE JURISDICTION OF MAINE—MAINE REMONSTRATING.

Mr. Van Buren (*Secretary of State*) *to Governor Smith, March* 18, 1831.

"I am instructed by the President to express his desire that, while the matter is under deliberation, no steps may be taken by the State of Maine, with regard to the disputed territory, which might be calculated to interrupt or embarrass the action of the executive branch of this government upon the subject."

Mr. Livingston (Secretary of State) to Governor Smith, Oct. 5, 1831.

"In directing me to make this communication, the President has instructed me to ask for such information on the subject as you may possess, and to add the expression of his earnest wish that no measures may be taken by the State authorities that will change the state of things, before the whole subject can be acted upon at the ensuing session of Congress."

Same to same, October 21, 1831, *in reference to a note to the British Chargé d'Affaires.*

"You will observe the extreme desire of the Executive of the United States to conform with scrupulous good faith *to the arrangement made with the minister of Great Britain* for preserving the state of things as it then existed on both sides until a final disposition could be made of the question."

Governor Smith to Mr. Livingston, November 10, 1831.

"In your last letter I am informed that an arrangement was made with the minister of Great Britain for preserving the state of things as it then existed on both sides, until a final disposition could be made of the question, and that the arrangement was communicated to me. I can only state, in reply, that until your last letter no notice of such an arrangement was ever received by me, and no copy of it can be found among the archives of this State. Though allusion is made to such an arrangement in the correspondence between Mr. Clay, former Secretary of State, and my predecessor, the late Governor Lincoln, it was then stated to have been violated by the British authorities." * * * "During the whole progress of this negotiation Maine has continued respectfully but decidedly to remonstrate against proceedings directly involving her rights and interests as a State, and to which her assent was never requested. She contends that the United States have not the power, by the federal Constitution, to alienate, by negotiation or otherwise, any portion of the territory of a State without the consent of such State. She opposed the submission of the question to arbitration. She has communicated to the President her conviction that the award of the arbitrator (the King of the Netherlands) was not binding upon this State or upon the United States, and has protested against its acceptance. She has exerted all the means in her power for the preservation of her rights and territory. And if, after all, the wisdom of Congress shall decide that the interests of the nation require the extraordinary opinion and advice of the King of the Netherlands to be carried into effect, from necessity alone will the people of this State be compelled to submit."

MR. CLAY'S ARRANGEMENT OF 1827 VIOLATED BY NEW BRUNSWICK.

From President's message, Dec. 4, 1827.

"While these questions [boundary, &c.] have been pending, incidents have occurred of conflicting pretensions and of dangerous character upon the territory itself in dispute between the two nations. *By a common understanding between the governments, it was agreed that no exercise of exclusive jurisdiction by either party, while the negotiation was pending*, should change the question of right to be definitively settled."

Mr. Clay (Secretary of State) to Mr. Vaughan, (British minister,) Nov. 17, 1827.

After reciting instances of British jurisdiction on the Aroostook river, Mr. Clay concluded his note in these words: "The procedings which it discloses *being incompatible with the rights of the United States*, at variance with that forbearance and moderation which, *it has been understood between us, were to be mutually observed*, and exhibiting the exercise of rigorous acts of authority within the disputed territory, which could only be justified by considering it as constituting an incontestible part of the British dominions, I have to request such explanations as the occasion calls for."

APPENDIX B.

CONSIDERATIONS, CONDITIONS, EQUIVALENTS, AND COMPENSATIONS OF THE TREATY.

Mr. Webster to commissioners of Maine and Massachusetts, July 15, 1842.

"If this line [the conventional line of the treaty] should be agreed to on the part of the United States, I suppose that the British minister would, as an equivalent, stipulate, first, for the use of the river St. John, for the conveyance of the timber growing on any of its branches to tide-water, free from discriminating tolls, impositions, or inabilities of any kind, the timber enjoying all the privileges of British colonial timber. All opinions concur that this privilege of navigation must greatly enhance the value of the territory and the timber growing thereon, and prove exceedingly useful to the people of Maine.

"Second. That Rouse's Point, in Lake Champlain, and the lands heretofore supposed to be within the limits of New Hampshire, Vermont, and New York, but which a correct ascertainment of the 45th parallel of latitude shows to be in Canada, should be surrendered to the United States.

"It is probable, also, that the disputed line of boundary in Lake Superior might be so adjusted as to leave a disputed island within the United States.

"These cessions on the part of England would inure partly to the benefit of the States of New Hampshire, Vermont, and New York, but principally to the United States. The consideration on the part of England, for making them, would be the manner agreed upon for adjusting the eastern boundry. *The price of the cession, therefore, whatever it might be, would in fairness belong to the two States interested in the manner of that adjustment.*

"Under the influence of these considerations, I am authorized to say, that if the commissioners of the two States assent to the line as described in the accompanying paper, *the United States will undertake to pay to these States* the sum of one hundred and fifty thousand dollars, to be divided between them in equal moieties, and also to undertake for the settlement and payment of the expenses incurred by these States for the maintenance of the civil posse; and also for a survey which it was found necessary to make.

"The line suggested, with the compensations and equivalents which have been stated, is now submitted for your consideration. That it is all which might have been hoped for, looking to the strength of the American claim, can hardly be said. But, as the settlement of a controversy of such duration is a matter of high importance, as equivalents of undoubted value are offered, as longer postponement and delay would lead to further inconvenience, and to the incurring of further expenses, and as no better occasion, or perhaps any other occasion, for settling the boundary *by agreement, and on the principle of equivalents*, is ever likely to present itself, the government of the United States hopes that the commissioners of the two States will find it to be consistent with their duty to assent to the line proposed and to the terms and conditions attending the proposition."

Massachusetts commissioners to Mr. Webster, July 20, 1842.

"Whether the national boundary suggested by you be suitable or unsuitable, whether the compensations that Great Britain offers to the United States for the territory conceded to her be adequate or inadequate, and whether the treaty which shall be effected shall be honorable to the country or incompatible with its rights and dignity, are questions, not for Massachusetts, but for the general government, upon its responsibility to the whole country, to decide. *It is for the State to determine for what equivalents she will relinquish to the United States her interests in certain lands in the disputed territory, so that they may be made available to the goverement of the United States in the establishment of the northeastern boundary, and in a general settlement of all matters in controversy between Great Britain and the United States.* In this view of the subject, and with the understanding that by the words "the nearest point of the highlands," in your description of the proposed line of boundary, is meant the nearest point of the crest of the highlands; that the right to the free navigation of the river St. John shall include the right to the free transportation thereupon of all products of the soil as well as of the forest, and that *the pecuniary compensation to be paid by the federal government to the State of Massachusetts shall be increased to the sum of one hundred and fifty thousand dollars*, the State of Massachusetts, through her commissioners, *hereby*

relinquishes to the United States her interest in the lands which will be excluded from the dominion of the United States by the establishment of the boundary aforesaid."

Commissioners of Maine to Mr. Webster, July 22, 1842.

"Without entering, however, upon the particular consideration of the terms and conditions, which we have not thought it necessary to do, we distinctly state that our repugnance to the line *is based upon the extent of territory required to be yielded.* We may, however, in passing, remark that all the pecuniary offers contained in your note, most liberally construed, would scarcely recompense and repay to Maine the amount of money and interest which she has actually expended in defending and protecting the territory from wrongs arising and threatened by reason of its condition as disputed ground.

"Considering, then, this proposition as involving the surrender of more territory than the avowed objects of England require, as removing our landmarks from the well known and well defined boundary of the treaty of 1783, (the crest of the highlands,) besides insisting upon the line of the arbiter in its full extent, we feel bound to say, after the most careful and anxious consideration, that we cannot bring our minds to the conviction that the proposal is such as Maine had a right to expect.

"We are now given to understand that the Executive of the United States, representing the sovereignty of the Union, assents to the proposal, and that this department of the government, at least, is anxious for its acceptance, as, in its view, most expedient for the general good.

"The commissioners of Massachusetts have already given their assent on behalf of that Commonwealth. Thus situated, the commissioners of Maine, invoking the spirit of attachment and patriotic devotion of their State to the Union, and being willing to yield to the deliberate convictions of her sister States as to the path of duty, and to interpose no obstacles to an adjustment which the general judgment of the nation shall pronounce as honorable and expedient, even if that judgment shall lead to a surrender of a portion of the birthright of the people of their State, and prized by them because it is their birthright, have determined to overcome their objections to the proposal so far as to say that if, upon mature consideration, the Senate of the United States shall advise and consent to the ratification of a treaty, corresponding in its terms with your proposal, and *with the conditions in our memorandum accompanying this note*, (marked A,) and identified by our signatures, they, by virtue of the power vested in them by the resolves of the legislature of Maine, give the assent of that State to such a conventional line, with the terms, conditions, and equivalents, herein mentioned."

"A.

"The commissioners of Maine request that the following provisions, or the substance thereof, shall be incorporated in the proposed treaty, should one be agreed on:

"1. That the amount of 'the disputed territory fund' (so called) received by the authorities of New Brunswick, for timber cut on the disputed territory, shall be paid over to the United States, for the use of Maine and Massachusetts, in full, and a particular account rendered, or a gross sum, to be agreed upon by the commissioners of Maine and Massachusetts, shall be paid by Great Britain as a settlement of that fund; and that all claims, bonds, and securities, taken for timber cut upon the territory, to be transferred to the authorities of Maine and Massachusetts.

"2. That all grants of land within that portion of the disputed territory conceded to Great Britain, made by Maine and Massachusetts, or either of them, shall be confirmed, and all equitable possessory titles shall be quieted to those who possess the claims; and we assent to a reciprocal provision for the benefit of settlers falling within the limits of Maine, and we trust that the voluntary suggestion of the British minister in regard to John Baker, and any others, if there be any similarly situated, will be carried into effect, so as to secure their rights.

"3. That the right of free navigation of the St. John, as set forth in the proposition of Mr. Webster, on the part of the United States, shall extend to and include the products of the soil in the same manner as the products of the forest, and that no toll, tax, or duty be levied upon timber coming from the territory of Maine.

"EDWARD KAVANAGH.
"EDWARD KENT.
"JOHN OTIS.
"WILLIAM P. PREBLE."

APPENDIX C.

The purpose of the treaty in respect to land claims as shown by the negotiators.

The avowed purpose of the negotiation was not to ascertain the true boundary line described in the treaty of 1783, but, by agreement and convention, to make *a new line* entirely irrespective of public or private rights, except so far as consistent with a new line, such as would be feasible as a boundary, and permit convenient access between the northeastern British-American colonies.—(Letters of Mr. Webster and Lord Ashburton, June 17, 1842.) Hence, when Lord Ashburton, June 21, 1842, suggested a slight variation from one part of the river St. John, (which was confessedly the natural boundary,) for the purpose of saving the Acadians, who were French by birth and British by allegiance, Mr. Webster insisted that the river was altogether too good a boundary line to be sacrificed for the mere convenience or wishes of the Acadians; and to meet their case he added:

"Their rights of property would, of course, be all preserved, both

of inheritance and alienation."—(Mr. Webster to Lord Ashburton, July 8, 1842.)

Whether these "rights of property," "both of inheritance and alienation," were according to the civil law or to British law, in either event they differ from Maine laws; yet it is plain that Mr. Webster intended to preserve them all in Maine. Nor did he act unadvisedly. Eight days after Lord Ashburton's letter, and nine days before Mr. Webster's reply, the commissioners of Maine had taken the same position, including *the possessory rights of other actual settlers*, in these words:

"In any treaty which may be made with Great Britain affecting these people, the *grants* which have been made to them by New Brunswick may and ought to be confirmed in fee simple, *with such provision in regard to the possessory rights acquired by other actual settlers there* as may be just and equitable."—(Commissioners of Maine to Mr. Webster, June 29, 1842.)

The boundary line, with all the conditions, equivalents, and compensation therefor, was agreed upon by the negotiators on the 15th of July, and on the 20th the commissioners of Massachusetts gave their assent, asking only an increase of compensation, which was accorded. On the 22d of July Maine gave her assent, on three new conditions, one of which specifically provided for grants and possessory claims, thus:

"2. That all *grants* of land within that portion of the disputed territory conceded to Great Britain, made by Maine and Massachusetts, or either of them, *shall be confirmed,* and *all equitable possessory titles shall be quieted to those who possess the claims;* and we assent to a reciprocal provision for the benefit of settlers falling within the limits of Maine."—(Maine Commissioners to Mr. Webster, July 22, 1842.)

"All equitable possessory titles shall be quieted *to those who possess the claims,*" said the Maine commissioners, and they consent to make the provision reciprocal. Mr. Webster accepted the condition—made it general, so as to apply to both sides of the line—substituted "equitable possessory *claims*" for the questionable words "equitable possessory *titles*"—fixed the term of possession—made the "improvements" the measure of the equity, and then provided that "all equitable possessory claims, arising from a possession and improvement of any lot or parcel of land *by the person actually in possession,* or by those under whom such person claims, for more than six years before the date of this treaty, shall" "be deemed valid, and be confirmed and quieted *by a release,* to the person entitled thereto, *of the title* to such lot or parcel of land so described as best to include the improvements made thereon."

APPENDIX D.

Resolves of the legislature of Maine, February 21, 1843, *authorizing first board of commissioners.*

STATE OF MAINE.

RESOLVES authorizing the appointment of commissioners to locate grants and determine the extent of possessory claims under the late treaty with Great Britain.

Whereas by the late treaty between the United States and Great Britain it is provided that all grants of land made by either party within the limits of the territory which by the treaty falls within the dominions of the other party shall be held valid, ratified and confirmed to the persons in possession under such grants, to the same extent as if such territory had by the treaty fallen within the dominions of the party by whom said grants were made, and all equitable possessory claims arising from a possession and improvement of any lot or parcel of land by the person actually in possession, or by those under whom such person claims, for more than six years before the date of the treaty, shall in like manner be deemed valid, and be confirmed and quieted by a release to the person entitled thereto of the title to such lot or parcel of land so described as best to include the improvements made thereon, and in all other respects the two contracting parties to deal upon the most liberal principles of equity with the settlers actually dwelling upon the territory falling to them respectively which has heretofore been in dispute between them; and whereas there are numerous inhabitants on and near the rivers St. John *and Aroostook* claiming lands under grants from the British government, and also by virtue of possession and improvements: Now, therefore, in order to determine the extent of the several claims and do justice to the claimants—

Resolved, That the governor, by and with the advice of the council, be, and he hereby is, authorized to appoint one or more commissioners, to act in conjunction with the commissioners on the part of the Commonwealth of Massachusetts in carrying into effect the provisions of the treaty, whose duty it shall be to set off by metes and bounds all grants as aforesaid, and also to set off to each settler so much land as he may be entitled to, not exceeding, however, two hundred acres to any one individual, unless his actual improvements are such that it is necessary to set off a larger quantity in order to include them; and the said commissioners are authorized to procure the necessary supplies and such assistance as may be necessary to enable them to carry into effect the object of this resolve. The said commissioners shall make a report of all their doings to the governor and council, who are authorized to audit their accounts and allow them such compensation for their services as to them shall appear reasonable and proper, not exceeding three dollars per day; and the land agent is hereby authorized to pay said commissioners the amount so allowed. And said commissioners shall return to the land office full field-notes and correct plans of all surveys made by them or under their direction.

The name of the occupant of each lot claimed by possession shall be given in the field-notes of the survey of the lot; and if the occupant be not the owner, the evidence by which the commissioners determine the ownership shall be entered with the field-notes, and the name of each owner to be written legibly on the plan upon the lot set off to him. They shall obtain authenticated copies of all grants made by the British government within the territory which has heretofore been in dispute within the State of Maine, and return them to the land office with the survey.

Resolved, That the land agent be, and he hereby is, authorized, in concurrence with the land agent of Massachusetts, to convey to said settlers, by deed, such lands as may be set off to them by the commissioners aforesaid upon the undivided lands; and if there be any found on the lands held by Maine in severalty, the land agent will convey in like manner to them.

Resolved, That the governor be requested to present to Congress, for allowance, an account of all expenditures incurred by this State by virtue of the provisions of these resolves.

Resolved, That the governor be requested to transmit a copy of these resolves to the governor of Massachusetts.

In the house of representatives, February 20, 1843. Read and passed.

DAVID DUNN, *Speaker.*

In the senate, February 21, 1843. Read and passed.

EDWARD KAVANAGH, *President.*

Approved February 21, 1843.

JOHN FAIRFIELD.

SECRETARY'S OFFICE,
Augusta, June 4, 1856.

I hereby certify that the foregoing is a true copy of the original deposited in this office, and that, in conformity to a law of the United States, I have caused the seal of the State to be hereunto affixed.

CALEB R. AYER,
Secretary of State.

APPENDIX E.

DECISION OF SUPREME COURT OF MAINE.

[32 Maine Reports, 214.]

"It is further insisted that the treaty does not operate upon the title or grants *proprio vigore*, but only as a contract requiring legislative interposition to carry it into effect; a treaty is usually a contract between two parties; it may, however, be so framed as to accomplish its purposes without any further act, if the language used be suitable, and the purpose be such as may be thus accomplished. In the United States a treaty is to be regarded as the supreme law, and operative, as

such, when the stipulations do not import a contract to be performed. It is true that the language used in the treaty between the United States and Spain, made on February 22, 1819, was not regarded, in the case of Foster *vs.* Neilson, 2d Peters, 314, as operative *per se* to confirm the grants alluded to; but when the language used in the Spanish duplicate came before the court, in the case of the United States *vs.* Percheman, 7 Peters, 51, 88, it was decided to be operative upon the grants without any legislative interposition. The provision of the treaty, as presented in the former case, declare that grants made before a certain period "shall be ratified and confirmed," and as presented in the latter case, "shall remain ratified and confirmed." There is an essential difference between the language upon which the court acted in the case of Foster and Neilson, and that used in the treaty of Washington, which provides that grants of land "shall be held valid, ratified and confirmed," which does not contemplate any future act as necessary to the validity, ratification, or confirmation of the grant; they are held to be so by those whose duty it may be to act upon them; the language addresses even more appropriately the judicial than the legislative department. It is the duty of this court to consider that treaty to be a law, operating upon the grant made under the authority of the British government, and declaring that it shall be held valid, ratified and confirmed.

"It is further insisted that it cannot be permitted so to operate, and thereby defeat the title of the demandant to the land, without a violation of that provision of the Constitution of the United States which declares that private property shall not be taken for public use without just compensation; it is not in the argument denied that public or private property may be sacrificed by treaty; but it is said that such a provision of a treaty as would take private property without compensation must remain inoperative or suspended until compensation has been made; such a construction would infringe upon the treaty-making power, and make its acts depend for their validity upon the will of the legislative department, while the Constitution provides that treaties shall be the supreme *law*.

"The clause of the Constitution referred to is a restriction imposed upon the legislative department in its exercise of the right of eminent domain; it must of necessity have reference to that department, which has the power to make compensation, and not to the treaty-making power, which cannot do it. This provision of the Constitution will not prevent the operation of the treaty upon the grant of the tenant, (Ware *vs.* Hilton, 3 Dallas, 236; United States *vs.* Schooner Peggy, 1st Cranch, 110;) the demandant must seek compensation for the loss of his land from the justice of his country. *Demandant non-suit.*"

APPENDIX F.

Resolves of the legislature of Maine, April 12, 1854, *authorizing second board of commissioners.*

STATE OF MAINE.

RESOLVES authorizing the appointment of commissioners to locate grants and determine the extent of possessory claims under the late treaty with Great Britain.

Resolved, That the governor, by and with advice of council, be, and he hereby is, authorized to appoint one or more commissioners, whose duty it shall be to examine all claims under the treaty of Washington to lands lying in this State which were not finally examined and adjudicated upon by the commissioners appointed under resolves of Maine, approved February 21, 1843, and of Massachusetts, approved March 24, 1843; and—

First.—To set off by metes and bounds all grants under said treaty not heretofore located by said former commissioners.

Second.—To set off to each settler upon lands of this State entitled to land under the treaty, by reason of possession and improvements, so much land as he shall be entitled to, not exceeding two hundred acres, unless his actual improvements are such that it is necessary to set off a larger quantity in order to include them.

Third.—To examine and report upon all claims, under said treaty, of persons to lands which, prior to the treaty, they had purchased or contracted for with either of the States of Maine or Massachusetts, and to set forth what claimants, if any, have already received compensation for their claims of the State of Maine.

Fourth.—To examine and report upon all claims to parties who claim to be equally entitled to land under said treaty by reason of possession and improvements, but where possession had not been commenced six years before the treaty.

Fifth.—To examine all claims under the treaty by reason of *possession* and improvement of lands lying within the township granted to the town of Plymouth and the tract granted to General Eaton, and to report the names of parties holding such possessions at the time of the treaty, and of the present claimants, if any change has been made, and the number of acres claimed by each; what would be a fair price for the land in each claim if in a state of nature, and what the present value of each improvement above the price of the lands, and on what terms the title to such lands can be procured from the present owners of the fee. The said commissioners shall make report of all their doings to the governor and council, who are authorized to audit their accounts and allow them such compensation for their services as to them shall seem reasonable and proper; and the land agent is hereby authorized to pay said commissioners the sum so allowed; and said commissioners shall return to the land office full field-notes and correct plans of all the surveys made by them or under their direction. The name of the occupant of each lot claimed by possession shall be

given in the field-notes of the survey of the lot; and if the occupant be not the owner, the evidence by which the commissioners determined the ownership shall be entered with the field-notes, and the name of each owner shall be legibly written on the plan of the lot set off to him.

Resolved, That when such report shall be made, the governor be requested to communicate a copy thereof to the President of the United States, and to inform him that the State is ready to direct deeds to be made to convey the *title* to the claimants so far as the title is in the State, and is also ready to procure a *title* to be made to the claimants whose claims are reported by the commissioners to be located on land the title to which is in grantees holding under the States of Maine or Massachusetts, if the same can be procured on reasonable terms; and if not, to give such claimants an equivalent in the title to other lands in exchange for their claim, whenever Congress shall be ready to make to the State a suitable indemnity and recompense for the land so required to be taken, and for that already taken, to satisfy the requirements of the treaty.

In the house of representatives, April 11, 1854. Read and passed.
NOAH SMITH, Jr., *Speaker*.

In the senate, April 12, 1854. Read and passed.
LUTHER S. MOORE, *President*.

Approved, April 12, 1854.
WILLIAM G. GROSBY.

Secretary's Office,
Augusta, June 4, 1856.

I hereby certify that the foregoing is a true copy of the original deposited in this office, and that, in conformity to a law of the United States, I have caused the seal of the State to be hereunto affixed.
CALEB R. AYER,
Secretary of State.

APPENDIX G.

United States Senate,
Washington city, August 7, 1856.

Sir: The Committee on Claims, acting by authority of a resolution of the Senate passed on the 18th day of July, 1856, have appointed you an agent to take and receive proof as to the claims of individuals described in the memorials of Geo. M. Weston, esq., commissioner of Maine, now pending before the committee.

In the execution of the duty thus assigned you the committee directs that, as soon as may be after the adjournment of the present session of Congress, you do proceed to the county or counties, in the State of Maine, in which the lands are located upon which the said claims are predicated, and after giving proper notice to the claimants

or their agent, you will proceed to take and receive such proof as may be presented to you in regard to the validity and amount of the several claims. You will receive and examine such documentary and record evidence bearing upon the cases as may be exhibited to you, and examine such witnesses as may be brought before you by the parties, and such as you may think proper to call upon to testify, both by direct and cross-examination, particularly as to the title and value of the property at the time it was taken. The testimony, including the answers to questions, should be taken down in writing, and verified by oath.

The object being to get at the real facts, the law, justice, and true amount involved in each case, and to guard against any possible imposition by *ex parte* evidence, you will, in addition to the above, make such personal examinations of the property as you may deem expedient.

You will make a report of your doings, accompanied with the testimony taken and information obtained, with your opinion thereon, to the Committee on Claims of the Senate, at the commencement of the next regular session of Congress.

RICHARD BRODHEAD,
Chairman of the Committee on Claims.

N. C. TOWLE, *Agent, &c.*

DECEMBER 1, 1856.

SIR: In the discharge of the duties assigned me, as agent, to "take and receive proof as to the claims of individuals described in the memorial of Geo. M. Weston, esq., commissioner of Maine," under a resolution of the Senate of July 18, 1856, and in conformity to your instructions, I proceeded, immediately after the adjournment of Congress, to Aroostook county, in the State of Maine, the locality in which the claims originated, and in which most of the persons interested reside.

I examined the lands in question, and received the statements of a large number of the settlers in relation to their claims; I also received such testimony as was presented in relation to the timber taken from the land during the suspension of the jurisdiction of the United States and of Maine over the territory, by an arrangement between the governments of the United States and Great Britain, and for which payment is claimed of this government.

All the testimony was taken down in writing, together with the questions propounded by me and the answers thereto, and is herewith submitted.

The accompanying statement contains a general view of the claims presented, and of the evidence by which they are sustained.

All of which is respectfully submitted.

N. C. TOWLE, *Agent, &c.*

Hon. RICHARD BRODHEAD,
Chairman Senate Committee on Claims.

Statement of the claims represented by Geo. M. Weston, esq., commissioner of Maine, growing out of the settlement of the northeastern boundary question, by the treaty of August 9, 1842, *submitted to the Senate Committee on Claims by N. C. Towle, agent, under the resolution of the Senate of July* 18, 1856.

SKETCH OF THE NEGOTIATIONS.

The difficulties in reference to the northeastern boundary commenced immediately after the conclusion of the treaty of 1783, and it was not until after the treaty of 1794 that the identity of the river St. Croix was determined, and the point to be regarded as the source of that river was ascertained and fixed. The next point named in the treaty was the highlands that divide the waters flowing into the Atlantic ocean from those which flow into the Gulf of St. Lawrence. The British government claimed that those "highlands" must be found south of the valley of the St. John's, a river which flows into the bay of Fundy; while the United States claimed that the "due north line" should be extended across the St. John's, and until it reached the "highlands" immediately south of the St. Lawrence river. The distance between these two ranges of highlands exceeded one hundred miles, and involved the claim to a large territory of rich and valuable country, embracing the entire valley watered by the Aroostook river, as well as a large portion of that watered by the upper St. John's and its tributaries.

The two governments finding it impracticable to make any further progress in ascertaining the boundary of the two countries, agreed by the convention of 1827 to submit the questions in dispute to the arbitration of the King of the Netherlands, who decided that no single range of highlands conforming to the description in the treaty was to be found, but that a portion of the description in the treaty would be applicable to the highlands north of the St. John's, as claimed by the United States, and another portion to the ridge south of the St. John's, as claimed by Great Britain; and he came to the conclusion that a division of the disputed territory between the two countries was the best practicable mode of settlement. This decision, had it been accepted, would have given the valley of the Aroostook to the United States.

TIMBER DEPREDATIONS.

In 1832 the valley of the Aroostook was an unbroken wilderness. The broad intervals and the gentle slopes along that river and its tributaries were covered with a heavy growth of pine, spruce, and maple forests. The lands bordering upon the St. John's had already been stripped of the more valuable timber, and the attention of the lumbermen began to b directed to the tributary streams. Immediately prior to the rejection of the award of the King of the Netherlands, the principal scene of lumbering operations in that region was on the Tobique, a considerable stream, which flows into the St. John's from the east, about six miles below the mouth of the Aroostook.

Prior to the rejection of the award in 1832, the valley of the Aroostook, which had been assigned to the jurisdiction of the United States, remained free from the operations of the lumbermen; but when that fact became known, and the British claim of jurisdiction over that region was revived, these men, being British subjects, began to turn their attention to that rich and tempting field of operations. Settlers from the neighboring province began to make their way up the Aroostook, and to occupy and improve the lands on both banks of that river. Large lumbering operations were prosecuted at the same time; and, as appears from the evidence taken, between the time of the rejection of the award of the arbiter, in 1832, and the time of the forcible occupancy of the territory by the authorities of Maine, in 1839, most of the valuable lumber for a considerable distance on each side of the river had been taken off, and the lands in the immediate vicinity of the river, for ten or fifteen miles from its mouth, were taken possession of and improved by the squatters. All obstructions to these proceedings were precluded by an arrangement between the two governments that neither should exercise jurisdiction over the territory in dispute.

In a communication addressed to the British minister, dated July 21, 1832, the Secretary of State says:

"Until this matter [the negotiations in reference to the disputed line] be brought to a final conclusion, the necessity of refraining on both sides from any exercise of jurisdiction, beyond the boundaries now actually possessed, must be apparent, and will, no doubt, be acquiesced in on the part of his Britannic Majesty's provinces, as it will be by the United States."

To this proposition the British minister responded, under date of April 14, 1833, that "his Majesty's government entirely concur with that of the United States in the principle of continuing to abstain, during the progress of the negotiation, from extending the exercise of jurisdiction within the disputed territory beyond the limits within which it has hitherto been usually exercised by the authorities of either party."

This arrangement was substantially adhered to until the winter of 1839, when the authorities of Maine, becoming aroused at the extensive depredations which were being committed upon what they regarded as the valuable property of the State and its citizens, resolved to interpose the State sovereignty for the protection of its own rights and interests, regardless of the diplomatic understandings of the general government. They accordingly despatched an armed posse with instructions to arrest the lumbering depredations in the regions of the Aroostook, and to assert and maintain the jurisdiction of the State over it, but not to interfere with the peaceable occupancy of actual settlers.

It appears from the testimony of D. O. Parkes, George Grantham, and M. Kean, who were on the ground at the time and speak from personal observation, that these lands were well timbered, and that the timber was mostly cut and taken off between 1832 and 1839—during the period of suspension of jurisdiction. Their average estimate of the quantity of timber on the land at the commencement of the operations (1832) was 2½ tons. Mr. Grantham thinks two-thirds of it

was taken off between 1834 and 1839. The other witnesses state that most of it was taken during that period.

These statements and estimates are corroborated by Mr. Pattee, one of the State commissioners, and by Mr. Hamlin, State land agent, and several others, whose affidavits are among the papers.

It is clear, from the whole testimony, that the quantity of timber taken during said period could not have been less than one ton per acre; and that the price actually paid for stumpage, at the time, was not less than one dollar and sixty cents per ton. The value of timber upon the stump, in that vicinity, at this time and for several years past, is $4 56 per ton.

The quantity of land upon which this stumpage is claimed is 23,646 acres, for which it is understood that the proprietors are willing to accept one dollar per acre as full compensation, although that rate is more than fifty per cent. below the value, as stated by the witnesses whose testimony was taken.

The fifth article of the treaty would seem to indicate that some arrangement had existed between the two governments designed for the protection of this property. It is as follows:

"Art. 5. Whereas, in the course of the controversy, respecting the disputed territory on the northeastern boundary, some moneys have been received by the authorities of her Britannic Majesty's province of New Brunswick, with the intention of preventing depredations on the forests of the said territory, which moneys were to be carried to a fund called "the disputed territory fund," the proceeds whereof, it was agreed, should be hereafter paid over to the parties interested, in the proportions to be determined by a final settlement of boundaries, it is hereby agreed that a correct account of all the receipts and payments on the said fund shall be delivered to the government of the United States," &c., to be paid over to the States of Maine and Massachusetts.

Whether any money was received from the provincial government, under this article, or not does not appear from the papers or evidence submitted to me.

That this timber was lost to the proprietors during the suspension of the jurisdiction of the United States and consequently of the State of Maine over the territory, in accordance with the diplomatic arrangement referred to, appears to be clearly shown; but whether the government is legally or equitably bound to remunerate its citizens for property lost under such circumstances is respectfully submitted. That the State of Maine withheld the exercise of her authority over the territory as a matter of courtesy to the general government, and not in submission to recognized authority, is apparent from the fact that she resumed the exercise of her jurisdiction in 1839 without the consent of the United States. But if such courtesy was exercised in deference to the known wishes of the general government, and the citizen was deprived of his property in consequence, was not the property of the citizen the consideration, by fair construction, paid for the forbearance which the interests of the United States required, and therefore taken for public use?

POSSESSORY CLAIMS.

The fourth article of the treaty is as follows, viz:

"Art. 4. All grants of land heretofore made by either party, within the limits of the territory which by this treaty falls within the dominions of the other party, shall be held valid, ratified, and confirmed to the persons in possession under such grants, to the same extent as if such territory had by this treaty fallen within the dominions of the party by whom such grants were made, and all equitable possessory claims arising from a possession and improvement of any lot or parcel of land, by the person actually in possession, or by those under whom such person claims, for more than six years before the date of this treaty, shall in like manner be deemed valid, and be confirmed and quieted by a release, to the person entitled thereto, of the title to such lot or parcel of land so described as best to include the improvements made thereon; and in all other respects the two contracting parties agree to deal upon the most liberal principles of equity with the settlers actually dwelling upon the territory falling to them respectively, which has heretofore been in dispute between them."

It has already been remarked, that upon the rejection of the award of the umpire in 1832, which had assigned the valley of the Aroostook river to the United States, the British claim to that territory was revived, and settlers from the neighboring province immediately commenced their settlements along that river, as well as in various other portions of the disputed tract. In order to carry this article into effect, so far as it applied to settlers upon the ungranted lands belonging to the States of Maine and Massachusetts, the authorities of those States, immediately after the ratification of the treaty, appointed a board of commissioners for the purpose of locating the grants and determining the extent of the possessory claims therein provided for. All claims to lands, *through grants* made by the government of Great Britain, as contemplated in the first clause of the fourth article, were examined and adjudicated upon by the commissioners, and ratified and confirmed to the persons in possession by the respective States.

In 1854, by authority of a resolution of the legislature of the State of Maine, another board of commissioners was appointed, with the view of carrying into effect the remaining clauses of the said fourth article, by examining into and providing for the quieting of the possessory and equitable claims of settlers. This board met upon the ground, and after hearing the statements and taking the proofs submitted to them they proceeded to have surveyed and set off by metes and bounds, to the persons whom they found to be entitled under the treaty, the lots to which they were adjudged to have just claims. The whole number of claims thus passed upon by the board amounted to about six hundred and fifty, and the quantity of land surveyed and set off to them amounted to 71,562 acres, being a little less than an average of 100 acres to each claimant. More than one-third of this

land had been purchased from the State, or had been contracted for before the date of the treaty.

It will be observed that the treaty provides that possessory claims extending back more than six years prior to its date shall be deemed valid titles. The commissioners set off, as coming under this head, 13,275 acres, divided amongst about 150 settlers.

The board of commissioners also went into the examination of the claims of persons who claimed to be equitably entitled to lands which they had improved, and of which they were in possession at the date of the treaty, but whose possession did not extend back six years.

So far as these claims depend upon the treaty, they are based upon the last clause of the fourth article, to wit: "And in all other respects the two contracting parties agree to deal upon the most liberal principles of equity with the settlers actually dwelling upon the territory falling to them respectively." The commissioners report about three hundred settlers of this class, claiming 31,400 acres.

A portion of these lands are located in townships, the title of which had passed from the State prior to their settlement, and, of course, a considerable time prior to the date of the treaty; and it is to this portion that the resolution of the Senate, authorizing this examination, particularly applies. These lots are principally located upon both banks of the Aroostook river, from the New Brunswick line through the townships granted many years ago to the town of Plymouth, Massachusetts, for the support of an academy, and to General Eaton, in consideration of his military services in the war with Tripoli. The settlers are mostly from the neighboring province, and made their settlements while that province claimed the jurisdiction of the country. The number of these improved and occupied lots, in the two townships, is ninety-seven, embracing, in the aggregate, about 8,434 acres. All of these lots, except about one thousand acres, are shown to have been occupied or improved more than six years before the date of the treaty; and, from proof submitted to me, and which is hereto annexed, I am satisfied that most of the lots embraced in the latter description, if not clearly shown to have been occupied and improved six years prior to the treaty, were, in fact, so occupied at that time, or very soon after, and that it would be a great hardship upon these poor settlers to make a distinction between them on so slight grounds. These settlers are all poor, and dependent for the support of themselves and their families upon the produce obtained by their own labor from their little possessions. Each family holds less, on an average, than one hundred acres, and the improvements are generally of a very primitive character.

The Maine commissioners estimated, from actual observation and from proof taken, the whole value of the property covered by these claims, in the two townships under consideration, (exclusive of the right of soil,) at about $31,000; and from the testimony of one of the commissioners, hereto annexed, it appears that they valued the land at two dollars per acre—the value of the improvements averaging a little less than $400 for each farm, and my observation would lead me to regard this as a very fair estimate.

It further appears from the proof submitted to me that the value of

the improvements have not materially increased since the making of the treaty, and the reason assigned for the absence of improvements is the uncertain tenure by which they hold their lands. The State, while it has given titles to those settlers who had located upon the State lands, had failed to provide any security for them, and the proprietors under the original State grants were threatening to eject them unless their demands for payment for the land were satisfied.

Whatever the strictly legal and technical rights of the parties may be, it seems to be clear that "the most liberal principles of equity"—according to which the faith of the government is pledged to deal with these parties—requires either that their titles should be affirmed or that some compensation should be made them for their improvements, by which they should be saved from the entire loss of all their hardly-earned possessions, and from being turned destitute from their humble homes.

The uncertainty of their present condition evidently operates greatly to discourage and perplex them, and to retard their efforts to improve their condition.

The quantity of land covered by these possessory claims is 8,434 acres, and its value is moderately estimated at $16,862, exclusive of the improvements. If the value of these be added the amount will be $49,139.

The commissioners of Maine, in their report to the governor, made during the last, year say: "The title to said lands can be procured from the present owners of the fee for two dollars per acre," (page 30;) and in another part of their report they say: "The proprietors of said townships are willing to release their title to said lots for a reasonable compensation, or exchange the same for other lands belonging to the State," (page 17.)

It appears that the authorities of the State, anxious to carry out the beneficent provisions of the treaty towards these settlers in the most liberal and effective manner, caused these surveys to be made, and, in all cases where the title was in the State, caused deeds to be executed by the land agent conveying the lands to the settlers. This is all the State could be expected to do, although it appears from the above remarks of the State commissioners that the expediency of the State's acquiring these lands from the private proprietors, in order to quiet the possession of the settlers, had been entertained.

Should the United States compensate the proprietors for these lands, they should require that good and valid titles be made to the settlers, so that they should be secured from all future proprietary claims. Nearly fifteen years have elapsed since the conclusion of the treaty. Some of the proprietary titles have changed hands by private sales, and some of the lands have been sold by the State for taxes and purchased in by the assignees of the old proprietors, by which they have acquired a title subsequent to the treaty, under which new embarrassments to the settlers might arise unless guarded against by the provision above referred to.

Lists of the names of persons regarded as entitled to hold their possessions by virtue of the treaty, showing the quantity of land held by each and the value of their improvements, together with a plan of

the surveys made under the direction of the Maine commissioners, are hereunto annexed, from which it will be seen that the whole extent of land covered by these claims is 8,434 acres, and the value of the improvements thereon at the date of the treaty, and not materially changed since, is $32,277. The value of the land, exclusive of improvements, is stated by Mr. Pattee and other competent witnesses to be two dollars per acre, and not materially changed since 1842.

It appears from the records and papers exhibited that the following named persons hold the proprietary titles to these lands, and are the claimants to indemnity for the loss of title by the operation of the treaty to the extent stated, viz:

Laura A. Stebbins, Catharine C. Ward, Rufus Mansur, and James A. Drew, jointly to 3,353 acres, on which the improvements are $10,711.

Edmund Monroe three-quarters and Benjamin Sewall one-quarter of 3,385 acres; improvements, $15,229.

James A Drew and Rufus Mansur, in equal parts, 1,692 acres; improvements, $6,337.

It has been decided by the supreme court of Maine, in Little's case, (32 Maine Reports, 214,) that the treaty, being the supreme law of the land, overrides all other titles, and *proprio vigore* gives title to those showing a possession in conformity to its stipulations. And this seems to be in accordance with the decisions of the Supreme Court, who held that "a treaty is the law of the land, and treated as a legislative act by the courts," (2 Peters, 314;) and the treaty for the acquisition of Louisiana, stipulating to protect the inhabitants of the Territory in their property, was so applied, (4 Peters, 511.) And Congress, by passing the act of the last session "for the relief of Josiah S. Little," recognizes the principle of the responsibility of the government in these cases.

List of settlers on the Eaton grant, showing the number of acres claimed by each under the 4th article of the treaty of Washington, and the value of the improvements thereon.

Names.	Acres.	Value.
John Sands and Thomas Walton	175	$150 00
Do do	107	400 00
James Shea	86	350 00
Patrick Conly	1	150 00
Robert Richards	88	300 00
R. Shugren and J. Corkins	210	525 00
George F. Parks	117	350 00
Hannah Parks	135	300 00
D. O. Parks	192	450 00
John Buber	77	375 00
William Buber	77	375 00
Charles Butler	52	300 00
Nathaniel Buber	61	200 00
Jesse Partridge	54	75 00
Moses Glass	1½	150 00
Patrick Somers	79	250 00
John Gallaughn	83	200 00
Elias Brown	69	400 00
Solomon Brown	72	450 00
Abel Humphrey	167	551 00
J. & E. Doyle	44	400 00
Samuel Work	79	550 00
L. Kelly	84	350 00
C. Gambeen	42	264 00
J. Walton	38	
Jonah Whiteknoct	68	300 00
James Walton	35	250 00
Thomas Kelly	142	250 00
Patrick Kelly	182	375 00
Elizabeth Dudy	260	450 00
Dennis Hale	176	1,221 00
Elisha Hale	82	
James Keegan	112	
	3,247	10,711 00
Add for error. (See testimony of S. B. Pattee, commissioner)	106	
	3,353	

List of settlers on the western section of Plymouth township, showing the number of acres claimed by each under the 4th article of the treaty of Washington, and the value of the improvements thereon. Edmund Monroe and Benjamin Sewell, proprietors.

Names.	Acres.	Value.
A. & J. and A. & F. Bishop	6	$800 00
John Lovely	98	400 00
Thomas Beaulean	75	700 00
A. & F. Bishop	48	300 00
W. & J. Bishop	127	600 00
Amos Bishop	80	300 00
John Flannery	51	175 00
Patrick Flannery	70	350 00
A. Giberson's heirs	101	200 00
Charles Hammond	44	175 00
William White	64	400 00
William Day	83	400 00
James Guigey	189	600 00
Daniel Turner	115	500 00
Isaac Smith	58	500 00
James Upton	138	700 00
Samuel Sands	46	
Richard Jordan	33	
William Haley	74	2,064 00
John Murphey	67	
William Upton	126	
Patrick Finland	121	
Sands & Walton	16	100 00
S. Work	21	265 00
J. & E. Doyle	39	
Margaret Doyle	126	500 00
Sarah McGlaughlin	199	650 00
T. Giveney and J. A. Drew	136	300 00
Edw. Guigey	251	800 00
Samuel Davenport	100	400 00
E. Watson	115	300 00
George Rogers	140	500 00
A. Clark	99	100 00
Thomas Amaden	77	450 00
Alex. Guigey	38	400 00
Samuel Farley	32	275 00
William Ward	56	275 00
John L. Higgins	75	300 00
Joseph Barnes	51	450 00
	3,385	15,229 00

List of settlers on the eastern section of Plymouth township, (Drew and Mansur, proprietors,) showing the number of acres claimed by each under the 4th article of the treaty of Washington, and the value of improvements thereon.

Names.	Acres.	Value.
Thomas Russell	209	$700 00
John Russell	84	600 00
Job Everett	52	275 00
John L. Higgins / Joseph Barnes and Ward	38	----------
S. & J. Barnes	55	300 00
Patrick Flannery	33	30 00
Thomas Flannery	83	550 00
George White	192	700 00
George Dean	45	250 00
Joseph Fisher	216	400 00
Samuel Dean	139	532 00
Martin Murray	30	100 00
John Sterling	97	575 00
John McDonald	84	375 00
Henry Hurd	116	275 00
William Lundy	101	275 00
Michael McKinney	118	400 00
	1,692	6,337 00

VARIATION OF BOUNDARY LINE.

A further claim is presented for indemnity for a quantity of land which was lost to the proprietors by the adoption in the treaty of Washington of a conventional line from the monument at the head of the St. Croix, bearing westward from the direct north line required by the treaty of 1783.

By the treaty of 1783 the boundary of the two countries was to be a line drawn from the source of the St. Croix "directly north" to the highlands. By the treaty of 1814 it was provided that commissioners should be appointed to ascertain and determine the points mentioned, &c.

The point to be regarded as the "head of the St. Croix" was fixed upon by the two governments in 1794, and a monument was erected to mark the spot. The "direct north" line from that point was never surveyed and marked by the two governments, although some attempts were made for that object. In 1804 surveyors, under the direction and authority of the State of Massachusetts, ran and marked a north line—up to which the State made sundry grants of land—which line corresponds very nearly with that run in 1840 by Major Graham, of the United States topographical engineers, and which is, without doubt, the true line of the treaty of 1783. The line adopted by the treaty of Washington of 1842 did not pretend to be the old treaty line, but a conventional line run and marked by an exploring party sent

out by the joint commission appointed under the treaty of Ghent, but never claimed by either party as being the recognized treaty line.

The proposition to adopt this new line was made by Lord Ashburton to Mr. Webster in his letter dated June 21, 1842, in which he proposes, "without at all doubting the accuracy" of Major Graham's line, to adopt the "exploring line," as being better established and recognized. And to this proposition of the British minister Mr. Webster assented, notwithstanding the Maine commissioners remonstrated against it, in a letter addressed to Mr. Webster, dated July 16, 1842, in which they inform him that the proposed line would "cut off a portion of the grants made long before by Massachusetts; that it was well known not to be the true line; and that it would take from Maine a strip of territory nearly a mile wide where it crosses the St. John's, and diminishing in width until it came to a point at the monument. The quantity of land lost to individual proprietors by this change in the line is represented to be about ten thousand acres, for which indemnity is asked.

Diagrams of the towns, portions of which were thus cut off, with affidavits of surveyors of the number of acres lost, with some other testimony in relation thereto, have been exhibited, and are submitted with the papers in these cases.

All of which is respectfully submitted.

N. C. TOWLE,
Agent, &c.

TESTIMONY IN RELATION TO THE POSSESSORY CLAIMS.

Statement of David O. Parks.

I, David O. Parks, of Eaton grant, of lawful age, depose and say: That I came on to the grant in 1826, then in the sixteenth year of my age. The lot now occupied by Abel Humphrey was then improved by my brother Moses. He had made a chopping on it of about an acre. He lived with my father. He was drowned the next year. It was called afterwards the Parks claim, and we considered it as belonging to the family. It was in consequence of our claim that nobody took possession of it. I left home in 1835. In 1838 I found Abel Humphrey in possession of it. My brother left no family of his own.

Question by Dr. Towle. What is the present value of the improvements on the Abel Humphrey lot?

Answer. About three hundred dollars.

Question by same. What was the value of those improvements in 1842?

Answer. I think the improvements then were not as valuable as at the present time.

In 1842, on the half of the Lawrence Kelly lot, bought by Stephen Sands, there was a clearing of six acres, and a log-house on one part; and a clearing of ten acres and a log-house on the other part. The houses were new, and worth about forty dollars each.

When I left home, in 1835, the lots now occupied by John Murphy and William Upton were occupied by Thomas Ellenwood. He had a wife, and lived on them, and was taking off crops.

The clearing and possession of Mr. House was made before I left home in 1835, and has been kept up to this time since 1838.

In 1838, when I returned home, Patrick Finland was living on the lot he now occupies. That possession was occupied when I left home, and was one of the oldest possessions on the grant.

At the time of the treaty, on the lot now occupied by Patrick Finland, there were eight acres, or more, cleared, and a log-house and barn.

DAVID O. PARKS.

STATE OF MAINE, *Aroostook, ss:*

Taken and subscribed before me this 15th day of September, 1856.

N. C. TOWLE,
Agent of United States Senate to take proof, &c.

Statement of Charles Buber.

I, Charles Buber, of letter H., testify and say: That in 1828 I and my brother David settled on adjoining lots in Plymouth grant, and continued to occupy it till about 1840, when we both sold to John B. Wenig. My lot is now occupied by Joseph B. Fisher. In my sale to Wenig I reserved a half acre for a graveyard. My brother's lot is now occupied by Samuel Deane and George Deane. It has been continuously occupied since my brother sold it. The northerly portion of the lot occupied by Samuel Deane was derived from one White's possession, but the largest portion of it was my brother's possession.

CHARLES his + mark. BUBER.

I also depose and say that George Murghussen followed House in the possession and improvement of the House lot.

CHARLES his + mark. BUBER.

I also depose and say that more than twenty years ago Antony Keane bought of Nathaniel Churchill, for ten pounds, a possession which includes the lot now occupied by Patrick Finland, to whom Keane sold.

CHARLES his + mark. BUBER.

STATE OF MAINE, *Aroostook, ss:*

Taken and subscribed before me this 15th day of September, 1856.

N. C. TOWLE,
Agent of United States Senate to take proof, &c.

Isaac Smith's statement.

I, Isaac Smith, of Plymouth grant, depose and say: That my brother-in-law, George Redicker, bought of William Everett a part of the House possession, and sold the same to Richard Jordan.

In 1844 I purchased of William Everett the lot I now occupy, which then included a lot I sold in 1853 to Samuel Sands. This was a part of a possession of Daniel Turner, which is one of the oldest possessions on the grant. The part I sold to Samuel Sands was as old a possession as the part I retained. Last summer I purchased of him. In the report of the Maine commissioners the part I retained is set down as possessed six years before the treaty, but the Sands part is put down as a later possession. This is a mistake.

ISAAC SMITH.

STATE OF MAINE, *Aroostook, ss:*

Taken and subscribed before me this 15th day of September, 1856.

N. C. TOWLE,
Agent of United States Senate, &c.

Memorandum.—Richard Jordan produced a deed from George Redicker.

John Murphy's statement.

I, John Murphy, of Plymouth grant, depose and say: That the House possession in 1842 was occupied by George Murghesson, a Scotchman. He was my next neighbor. He then had a clearing of about twelve acres, and a house and barn. When he moved away, about nine years ago, he sold what he retained of the possession to Cornelius Gambeen. I have heard that he had before sold a part to William Everett. Gambeen sold to Hiram Hall, who sold to William Haley, who has since sold to John Buber.

JOHN his + mark. MURPHY.

STATE OF MAINE, *Aroostook, ss:*

Taken and subscribed before me this 15th day of September, 1856.

N. C. TOWLE,
Agent of United States Senate to take proofs, &c.

Memorandum.—Mr. John Buber exhibited a deed in due form from William Haley of lot 21, as described in report of Maine commissioners.

Statement of Patrick Conley.

, Patrick Conley, of Eaton grant, of lawful age, depose and say:
t I sold a possession six years ago to Edward and James Doyle,

for six hundred and fifty dollars. The improvement was worth at least as much in 1842. I came on to the grant about the year 1830. There were then only two or three settlers. There had been no cutting of timber except the winter before I came. The timber then cut was on the brow of the river. After I came there was a good deal of cutting by people from New Brunswick.

his
PATRICK + CONLEY.
mark.

GEORGE M. WESTON, witness to the signature of Patrick Conley.

STATE OF MAINE, *Aroostook, ss:*

Taken and subscribed before me this 13th September, 1856.

N. C. TOWLE,
Agent U. S. Senate to take proof, &c.

Statement of James Doyle.

I, James Doyle, of letter H. plantation, in the State of Maine, of lawful age, depose and say: That in company with my brother Edward, I purchased in 1850 the possession of forty-three and three-quarters acres, in the Eaton grant, of Patrick Conley, for six hundred and fifty dollars. The possessions in that quarter will not sell for so much money as when I purchased, and were not so high in price when I purchased as they were ten years before.

The settlers and occupants on the Eaton and Plymouth grants, in consequence of the doubts and uncertainty as to obtaining their titles under the treaty of Washington, have not increased their improvements since 1842, but they have, in fact, become less valuable by the decay of buildings and the wearing out of clearings.

JAMES DOYLE.

AROOSTOOK, *ss:*

SEPTEMBER 13, 1856.

Personally appeared James Doyle, and made oath that the above statement by him subscribed is true.

Before me: N. C. TOWLE,
Agent U. S. Senate, authorized to take proof in certain cases.

Statement of James Walton.

I, James Walton, of Eaton grant, of lawful age, depose and say: That my deed from my step-father, Stephen Sands, of about one-half of the possession which he purchased of Lawrence Kelley, was burnt up when my house was burned, which is the reason I am not able to produce it. I have been in possession under the deed fourteen or fifteen years.

his
JAMES + WALTON.
mark.

STATE OF MAINE, *Aroostook, ss:*

Taken and subscribed before me this 13th September, 1856.

N. C. TOWLE,
Agent U. S. Senate to take proof, &c.

Statement of Patrick Kelley.

I, Patrick Kelley, of Eaton grant, of lawful age, depose and say: That my brother, Lawrence Kelley, sold about half of his original possession to Stephen Sands, who sold a part of it to his step-son, James Walton, and another part to Cornelius Gampeen, who afterwards sold to James Walton. The half sold by my brother to Sands had been occupied and claimed by him as long as the half which he retained.

PATRICK his + mark. KELLEY.

I know the facts above stated by Patrick Kelley to be true.

WILLIAM BUBER.

STATE OF MAINE, *Aroostook, ss:*

Taken and subscribed before me this 13th September, 1856.

N. C. TOWLE,
Agent U. S. Senate to take proof, &c.

Statement of John Noland.

I, John Noland, of Plymouth grant, depose and say: That I sold to Patrick Finland the lot he afterwards sold to John Murphy and James Shay. I was in possession of it about one year. I bought of Antony Keane, who had been in possession fully five or six years before I bought. I am one of the first settlers on the river, and lived at that time about three miles below the lot. I do not know how long Patrick Finland kept the lot before he sold to Murphy and Shay.

JOHN his + mark. NOLAND.

STATE OF MAINE, *Aroostook, ss:*

Taken and subscribed before me this 15th September, 1856.

N. C. TOWLE,
Agent U. S. Senate to take proof, &c.

Statement of John Murphy.

I, John Murphy, of Plymouth grant, depose and say: That I bought the possession of the lot I now occupy of Patrick Finland a

short time, not more than a year, before the treaty. Patrick Finland was then in possession. On my lot, in 1842, there was no improvement except a log-house, which I built. I bought, with James Shay, what had been one lot of Patrick Finland. In dividing with Shay, I took the part on which there was no improvement. The part falling to James Shay in the division is now occupid by William Upton. On this part, at that time, there were about four acres under grass, six other acres felled, and no buildings of value.

JOHN MURPHY.

STATE OF MAINE, *Aroostook, ss:*

Taken and subscribed before me this 15th day of September, 1856.

N. C. TOWLE,
Agent U. S. Senate to take proof, &c.

Statement of Patrick Conley.

I, Patrick Conley, of Eaton grant, of lawful age, depose and say: That the possession of Frank Gallahar, afterwards purchased by Dennis Hale, was commenced four or five years after my settlement on the grant, which was made in December, 1829, as I am now able to fix the date from an examination of my papers. Gallahar did not work on the lot all the time, but claimed it, and it was called his lot. At the time of his sale to Dennis Hale he was living at the mouth of Aroostook river.

PATRICK his + mark. CONLEY.

STATE OF MAINE, *Aroostook, ss:*

Taken and subscribed before me this 13th day of September, 1856.

N. C. TOWLE,
Agent U. S. Senate to take proof, &c.

Statement of Patrick Kelly.

I, Patrick Kelly, of Eaton grant, of lawful age, depose and say: That when I settled on the grant there was a possession occupied by Frank Gallahar, afterwards purchased by Dennis Hale. Dennis Hale did not take a deed from Frank Gallahar until about 1840, but had purchased and occupied a considerable time before, although he had not completed his payments. I settled on the grant twenty-one years ago last July.

PATRICK his + mark. KELLY.

STATE OF MAINE, *Aroostook, ss:*

Taken and subscribed before me this 13th day of September, 1856.

N. C. TOWLE,
Agent U. S. Senate to take proof, &c.

Testimony of Dennis Hale.

I, Dennis Hale, of Eaton grant, of lawful age, depose and say: That in the year following the Aroostook war—I mean in the spring after the winter of that war—I bought Francis Gallahar's possession on said grant, and moved on to it. I paid him twenty-five dollars for it. He was then living with his wife's friends, at the mouth of the Aroostook river. His possession appeared to be six or eight years old when I bought it. It was called Gallahar's improvement in the neighborhood. The Gallahar possession covered the lot now occupied by me, the lot occupied by my son, Elisha Hale, and the east half of the lot occupied by James Keagan. My son Elisha derives his title from me directly. James Keagan derives his title from me through my step-son, Hyell Rockwell. I was born in Ireland, and naturalized about seven years ago.

his
DENNIS + HALE.
mark.

STATE OF MAINE, *Aroostook, ss:*

Taken and subscribed before me this 13th September, 1856.

N. C. TOWLE,
Agent U. S. Senate to take proof, &c.

Statement of James Giggey.

I, James Giggey, of Plymouth grant, of lawful age, depose and say: That the lot on said grant occupied by Patrick Finland was occupied twenty-five or twenty-six years ago, when I came to settle on the grant. It was then occupied and improved by Antony Keane, of whom Patrick Finland purchased the possession, about the time of the Aroostook war. Antony Keane continued to crop and occupy the lot until he sold out to Patrick Finland. Antony Keane and Patrick Finland are both Irish born.

his
JAMES + GIGGEY.
mark.

STATE OF MAINE, *Aroostook, ss:*

Taken and subscribed before me this 13th September, 1856.

N. C. TOWLE,
Agent United States Senate to take proof, &c.

Statement of Abel Humphrey.

I, Abel Humphrey, of Eaton grant, of lawful age, depose and say: That in 1838 I moved on to the Moses Parks possession. I consulted the Parks family, and was assisted in settling by George Parks, a brother of Moses. The father of Moses was an old man, and transacted little or no business. The mother of Moses principally managed the affairs of the family. I asked and obtained her permission to go on to the lot.

In 1842 the clearing on the Dennis Hale lot was about fifteen acres; on the Elisha Hale lot about six acres. They both had log-houses and barns.

his
ABEL + HUMPHREY.
mark.

STATE OF MAINE, *Aroostook, ss:*

Taken and subscribed before me this 15th of September, 1856.

N. C. TOWLE,
Agent United States Senate to take proof, &c.

Copy of Resolve of Maine of August 9, 1849.

RESOLVE in favor of certain settlers upon the public lands.

Resolved, That the land agent is hereby authorized to convey a lot of land, not exceeding one hundred and twenty acres, to each of the settlers upon lands of this State, in the territory formerly in dispute between the United States and Great Britain, who has not heretofore received land under the treaty of Washington, whenever he shall produce satisfactory evidence of being actually settled on said lot at the date of the aforesaid treaty; and whenever the land agent of Massachusetts shall be authorized to unite in said conveyance, he is further empowered to join said agent in the execution of deeds to all persons producing satisfactory evidence of having been settled as aforesaid on the joint lands of the States of Maine and Massachusetts.

TESTIMONY IN RELATION TO THE LOSS OF TIMBER.

Testimony of George Grantham.

I, George Grantham, of Presque Isle, of lawful age, depose and say: That I came on to the Aroostook river in 1834, and settled on a lot in township G, about a mile above the Eaton line. After living there two years, I moved further up the river to township 13, in the 4th, where I lived ten years. My travel was up and down the river in boats to obtain my supplies, &c. I averaged making the journey twelve times in a year. In the winter I travelled on the ice on the

river. In the winter of 1834–'35 there was a large operation on the Plymouth and Eaton grants by the two brothers Brown, who lived then and live now between the mouths of the Aroostook and Tobique. The following year there was a large operation by Thomas Sutherland, a province man, then residing on the Plymouth grant. Sutherland cut two years. I recollect, among other operators, one Wolverton, who cut on the Little Madawaska, who then lived on the St. John's; the Burselys, province men, now living at the Grand Falls; the Rogerses, of Woodstock, and Hallingwood Murphy, in 1834–'35, then living on the St. John's river. There were heavy operations every year until the posse came on in the winter of 1838–'39, and some operations then going on were broken up by the posse. During all this time the jurisdiction on the Aroostook river was wholly exercised by the province authorities. McLaughlin, the British warden, collected a duty of eight shillings, province money, per ton on all timber cut on the Aroostook. He was up the river two or three times every year, taking an account of the cuttings, and the province merchants who supplied the operations gave bonds to be responsible for the duty. He always forbid the cuttings, but the understanding was that he did so only as a matter of form, and, in fact, if the duty was paid, there was no opposition to the cuttings, or to the sale of the timber in the province. No jurisdiction was asserted by Maine until 1839, and no claims interposed by or on behalf of the United States proprietors.

I have been a practical lumberman in this region since 1819. I have been over the Eaton and Plymouth grants. In my judgment they would have cut, in a state of nature, one ton of large merchantable pine and 1,000 feet, board measure, of logs to the acre.

From 1834 to 1839 the stumpage we paid on the river was $1 60 per ton, being the eight shillings (province currency) which we paid to the British warden as a duty.

In the winter of 1832–'33 I cut on the St. Francis, and in the spring of 1833 I paid this duty to the agent of McLaughlin. It was understood in the county that after the Dutch award was rejected some arrangement was made by which the province authorities were authorized to collect this duty.

Question by Dr. Towle.—How much timber had been cut on Eaton and Plymouth before you came on to the Aroostook?

Answer.—Not much. The settlements had been just commenced on the river. There were on it at that time only three horses and very few oxen. It was about this time that the timber began to fail on the Tobique, and attention began to be turned to the Aroostook. If there had been no interference by the British authorities in collecting duty, the cuttings would have been larger.

Question by Dr. Towle.—What assertion, if any, of private ownership over the Eaton and Plymouth was made prior to 1839?

Answer.—In 1835 a Mr. Spear, of Boston, came on and stopped at my house, claiming to represent the owners. I understood that he took down the names of the settlers.

Question by Dr. Towle.—Did the lumbermen cut lumber wherever they found it, without regard to ownership?

Answer.—They did. The only obstruction was the duty collected by the British authorities.

Question by Dr. Towle.—How much timber was taken from those grants from 1834 to 1839?

Answer.—A great deal, but I cannot tell how much. The operations of 1834, 1835, and 1836 took off the cream of the timber. Not much of the log timber had been taken in 1839. In my judgment two-thirds of the ton timber had then been taken off.

GEORGE GRANTHAM.

STATE OF MAINE, *Aroostook, ss:*

Taken and subscribed before me this 17th day of September, 1856.

N. C. TOWLE,
Agent United States Senate, &c.

Statement of Stephen B. Pattee.

I, Stephen B. Pattee, of Section D, (Fort Fairfield,) of lawful age, depose and say: That I went on to the Aroostook river in January, 1839, with the civil posse, and remained about fifteen months. I commenced the erection of my mills at Fort Fairfield in 1842, and have lived there since. In 1854, in company with Mr. Whidden, under commission from the State of Maine, I appraised the value of certain settlers' improvements on the Eaton and Plymouth grants. The third commissioner, Mr. Hutchinson, was not present at the appraisement, but concurred in it subsequently. Our appraisement was based upon a personal examination of the lots, and included improvements of land as well as buildings. We found, as a general rule, that our appraisements agreed with the values of the improvements, as estimated in the neighborhood.

These improvements, with a few exceptions, have not been increased since my residence at Fort Fairfield, the settlers being discouraged by the condition of their titles.

Farms in my vicinity, and generally through Aroostook county, have depreciated in price since the period of say five years after the Aroostook war. There was then a disposition to emigrate into the county, and farms could be readily sold for cash. Since about 1845, the tendency has been to emigrate to the western States, and the selling price of our agricultural property has depreciated about one-third.

In 1842 the selling price of State settling lands was one dollar per acre. At that time, if the proprietors of the Eaton and Plymouth grants had compromised with the settlers at two dollars per acre for the original value of the soil, independent of the timber which had been taken off, and independent of the improvements, it would have been a fair adjustment. This would have been a double price, in consequence of the settlers having taken the lots fronting on the river. In 1839 the pine timber had been mostly taken from both the Eaton and Plymouth grants. They were originally well timbered with pine.

That timber, if now standing, could be sold for one-half of the proceeds of the sale of it delivered at St. John. The average price of timber of that character at St. John during the last four years has been about nine dollars a ton.

When I went on in 1839 with the civil posse, we found trespassing actually going on upon both the Eaton and Plymouth grants. The principal trespasser was Plummer, who had got out from Plymouth about fifteen hundred tons.

In 1854 and 1855 I was a member of the house of representatives of Maine. In 1849 I was appointed deputy collector and inspector at Fort Fairfield by the United States collector at Passamaquoddy.

From 1839 to 1842 pine timber which would now sell at St. John at nine dollars per ton would have sold at about six dollars per ton. [This was an answer to question by Dr. Towle.]

Question by Dr. Towle. What would have been a fair and just price for the settlers to have paid the proprietors in 1842, in order to have obtained a fee-simple title to their possessions?

Answer. Two dollars per acre.

Question by Dr. Towle. Do you think that the value of the improvements has increased, or otherwise, since 1842?

Answer. It has not increased. The choppings have been enlarged, but the former clearings have been neglected and are depreciated.

Question by Dr. Towle. Did the sums given in your report as the value of the improvements include the value of the soil?

Answer. They did not.

Question by Dr. Towle. Upon what principles did you make your appraisement of improvements?

Answer. We appraised them at the rates at which similar improvements were bought and sold in that vicinity. We made a particular examination of the buildings and clearings in each case.

Question by Dr. Towle. How would the value of the improvements commenced prior to 1842, but not as early as 1836, compare per acre with the value of the improvements commenced as early as 1836?

Answer. It would be about the same.

Question by Dr. Towle. Are the lots fronting on the river generally rated at double the value of back lots?

Answer. They are. The location is better, and the intervals on the river are considered our richest lands. I own, myself, seventy-five acres on the Aroostook river, in letter D, which I would not sell at less than twenty-five dollars per acre.

STEPHEN B. PATTEE.

STATE OF MAINE, *Aroostook, ss:*

Sworn and subscribed before me this 17th day of September, 1856.

N. C. TOWLE,
Agent U. S. Senate to take and receive proof, &c.

Statement of John McCluskey.

I, John McCluskey, of Houlton, of lawful age, depose and say: That I have resided at Houlton since 1840, and have been engaged in

lumbering on the Aroostook and St. John's. From one-third to one-half of all the lumber cut on the Aroostook is cut by me. I have stores at Fort Fairfield and Presque Isle. I have paid the past winter as high as ten dollars per 1,000 feet, board measure, stumpage for pine. A ton is equal to four hundred and eighty feet. I am acquainted with the Plymouth grant, and better acquainted with the Eaton grant. From the appearance of the stumps they must have been well timbered with pine. The pine was as large as any of the Aroostook pine, which is the largest pine on the St. John's waters. I think the Eaton grant, in a state of nature, would cut two thousand feet, board measure, of pine to the acre. I first knew the Eaton grant in 1842 or 1843. It was then pretty thoroughly stripped of its pine.

Having driven lumber several years out of the Little Madawaska, I know that there is a good and valuable mill privilege about twenty rods from its entrance into the Aroostook river in the Eaton grant. It is as good a privilege as there is on the Aroostook river.

There is a road running from Fort Fairfield up the Aroostook river, on the south bank, called the Carriban road. It runs nine miles through the Plymouth and Eaton grants. One road was built in 1850, at a cost of four thousand dollars. James A. Drew built it. The cost was assessed on the proprietors of Plymouth and Eaton. The road runs through the lots fronting on the river.

Question by Dr. Towle. How long have you lumbered on the Aroostook river?

Answer. Ten years successively.

Question by Dr. Towle. How much has stumpage risen within that time?

Answer. It has risen about fifty per cent. within that time, and from the information I have I believe that it has certainly doubled within twenty years. In the winter of 1847–'48 I bought stumpage of the State on Fish river at an average of three dollars per 1,000 feet, board measure. In 1851 or 1852 I bought about six hundred and forty acres of one Ormsby, in township H, three miles from the river, at three dollars per acre. The State has always permitted at lower rates than private proprietors. The year previous to my operations on the Fish river, above alluded to, I paid the State on the same place two dollars and fifty cents per ton, which is equal to more than five dollars per 1,000 feet, board measure.

JOHN McCLUSKEY.

STATE OF MAINE, *Aroostook, ss:*

Taken and subscribed before me this 17th of September, 1856.

N. C. TOWLE,
Agent U. S. Senate to take proof, &c.

Statement of Charles Buber.

I, Charles Buber, of letter H, depose and say: That I knew about the lumbering of Hopkins on the Eaton grant, about twenty-one years

ago. I do not know the quantity, but my recollection is that he got as much as four hundred tons. The winter before, Chandler and Hooper operated on the Eaton and got off not less than six or seven hundred tons. One of their logging roads is called the "Chandler road" to this day. In 1832 or 1833 Mr. Brown got about three hundred tons from the Plymouth, and hauled it to a brow opposite my house. Mr. Brown lived at the mouth of the river. The next year Hopkins and Parker hauled out to the same place about five hundred tons. The next year Thomas Sutherland hauled out at the same place about two hundred and fifty tons. I also recollect that Benjamin Gardiner made an operation about the same time. I recollect these instances of cutting, because their landings were near my place. The Plymouth was better timbered than the Eaton.

CHARLES his + mark. BUBER.

STATE OF MAINE, *Aroostook, ss:*

Sworn and subscribed before me this 15th September, 1856.

N. C. TOWLE,
Agent U. S. Senate to take proof, &c.

Statement by Michael Keane.

I, Michael Keane, of Eaton grant, in the State of Maine, depose and say: That I am sixty-one years of age; was born in Ireland, and came on to the Aroostook river in 1831, by the way of New Brunswick, and settled on the Eaton grant, where I have lived ever since. I was never naturalized as a citizen of the United States. In 1831 there were about twenty families on the Aroostook river. On the Eaton grant Patrick Conley, and Lawrence Kelly, and Jonathan Parks, and Daniel O. Parks were living when I came, having come in three years before. When I first knew the grant but very little pine timber had been cut off, and there were large amounts standing. The cuttings, when I came on, were confined to a few lots on the river. From 1831 to the time of the Aroostook war the quantity of pine cut was large—say eight thousand tons, perhaps more, perhaps not so much. The quality was the best in this region. At the time of the Aroostook war the grant had been pretty much stripped of its pine.

The improvements on the Eaton grant, on the old improved lots, have not increased, but the contrary, within the past fifteen years, the settlers being troubled and discouraged about their titles.

MICHAEL KEANE.

AROOSTOOK, *ss:* SEPTEMBER 13, 1856.

Personally appeared Michael Keane, and made oath that the foregoing statement by him subscribed is true, according to the best of his knowledge and belief.

Before me, N. C. TOWLE,
Agent U. S. Senate, authorized to take proof in certain cases.

Statement of Patrick Kelley.

I, Patrick Kelley, of Eaton grant, of lawful age, depose and say: That I bought a possession and settled on the grant twenty-one years ago last July. The winter before I settled there had been a large lumbering operation on the grant, supplied by Mr. Tibbats, of Tobique, New Brunswick. From that time down to the Aroostook war there was a great deal of cutting by the province people, by the settlers, and others. There were operations going on at the time of the war, which were broken up at that time. I cut, myself, with others. We did not know under whose government the territory would fall. From the appearance of the standing timber and of the stumps when I settled here, the Eaton grant and the Plymouth grant had been well timbered. Before I came, permits to cut timber on them had been given by the authorities of New Brunswick. We never heard of any claims of United States proprietors until after the Aroostook war. On the old improvements but little has been done of late years, on account of the uncertainty of getting our titles under the treaty of Washington.

PATRICK his + mark. KELLEY.

GEORGE M. WESTON,
Witness to the signature of Patrick Kelley.

STATE OF MAINE, *Aroostook, ss:*

Taken and subscribed before me the 13th of September, 1856.

N. C. TOWLE,
Agent, &c.

Statement of William Buber.

I, William Buber, of Eaton grant, of lawful age, depose and say: That I have lived on said grant since July, 1839. I first came on to the Aroostook river in 1827. There were then two or three families on the grant. The forests were untouched, and there were large amounts of spruce and pine timber standing on the shores. In 1839 this timber had been mostly stripped off from the front and back lots.

On the old improved lots on the Eaton and Plymouth grants but little has been done during the last fifteen years, on account of the disputed title. Drew and Mansur, and other proprietors, have claimed it, and we have had no heart to do much. We have talked it over among ourselves, and concluded it was not safe to lay out much until our rights were settled under the treaty of Washington.

WM. BUBER.

STATE OF MAINE, *Aroostook, ss:*

Taken and subscribed before me this 17th September, 1856.

N. C. TOWLE,
Agent U. S. Senate to take proofs, &c.

Statement of Lawrence Kelley.

I, Lawrence Kelley, of Eaton grant, of lawful age, depose and say: That I knew of the commencement of Francis Gallahar's possession. He took off two crops. He then lived at Patrick Conley's house. I heard of his sale to Dennis Hale, perhaps eight years after the commencement of his possession. The possession was always called Gallahar's possession, and he was understood and recognized as the owner.

Of my own possession I sold the up-river half to Stephen Sands. I had occupied and improved the part I sold to Sands as fully as the part I retained. He paid me a cow, reckoned at that time at forty dollars.

The improvements on the old possessions on the Eaton and Plymouth grants have gained little, if any, during the past fifteen years, the settlers being discouraged by the uncertainty of their titles.

I settled on the Eaton grant about twenty-seven years ago. There was then a large amount of pine timber on both Eaton and Plymouth. The front ridges on the river were then covered with pine. It was cut off every year from that time to the time of the Aroostook war by settlers and people from the province. Mr. Tibbatts, Mr. Hopkins, Abraham Hammond, and Mr. Giverson, of Tobique, I recollect as operating. Mr. Tibbatts was the largest operator. He furnished the settlers with supplies to operate with, and bought all the settlers would haul to the banks of the river. No opposition was offered to those operations by American proprietors. The only person who asserted any right of control over the premises was Mr. McLaughlin, the British warden of the disputed territory. After the Aroostook war these operations were broken up. During the winter of that war Mr. Plummer was operating on Plymouth with twelve horses. His teams were broken up by the civil posse of Maine. At the time of the Aroostook war Eaton and Plymouth were pretty thoroughly stripped.

his
LAWRENCE + KELLEY.
mark.

STATE OF MAINE, *Aroostook, ss:*

Taken and subscribed before me this 13th September, 1856.

N. C. TOWLE,
Agent U. S. Senate to take proof, &c.

Statement of David O. Parks.

I, David O. Parks, of Eaton grant, depose and say: That in May or June, 1835, I was employed by three gentlemen to explore the grant for timber. I do not recollect their names, but my impression is that they lived in the western part of Maine. I spent two days with them, cruising through the timber. Our judgment was that the pine

timber suitable for ton timber would average about a quarter of a ton per acre. We estimated no pine except for ton timber. There had been a good deal cut off before. When I returned home in 1838, this timber had been principally removed. The Plymouth grant was much better timbered with pine than the Eaton grant. We estimated on the Eaton that the timber standing, if sound, would average half a ton per acre. We made an allowance of one-half for rots.

DAVID O. PARKS.

STATE OF MAINE, *Aroostook, ss:*

Sworn and subscribed before me this 15th day of September, 1856.

N. C. TOWLE,
Agent U. S. Senate to take proof, &c.

Statement of Elijah L. Hamlin.

I, Elijah L. Hamlin, of Bangor, of lawful age, depose and say: That in the year 1838 I was land agent of Maine. In the spring of that year I sent Colonel Eben Webster to report upon the trespassing upon the Aroostook and St. John's rivers. In the fall I visited the Aroostook river myself, and when I returned left an agent (Mr. Buckmore) to look after the interests of the State. The reports of Colonel Webster and Mr. Buckmore have been published. I saw myself operations in timber going on at various points as I passed down the Aroostook river, and particularly upon the Plymouth township. Prior to 1838 the jurisdiction of the State had not been exercised for some time as far north as the Aroostook, and was then resisted by Mr. McLaughlin, calling himself the British warden of the disputed territory, on the ground that, by an arrangement between the governments of the United States and Great Britain that region was to remain under the control of New Brunswick until the boundary dispute was settled. In the winter of 1839, however, the jurisdiction of the State against trespassers was maintained by civil and military force.

In the summer of 1842 I was three months at Fort Fairfield. My principal object in remaining there was to ascertain, by examination and inquiry, the condition of the lands and timber upon the Aroostook river, with a view to purchases. With the exception of remote tracts of land, I found that very little valuable timber was left. Of the Plymouth township, which adjoins the township in which Fort Fairfield is situated, I made a particular examination, at the request of Frederick Hobbs, esq., who was the agent and attorney of parties interested in the ownership. I reported to Mr. Hobbs the condition of the township and my opinion of its value. I found the township substantially stripped of its pine timber, and the accessible lots on the river in possession of squatters. Under the circumstances, I advised Mr. Hobbs that his clients would do better to abandon the township than to pay taxes upon it.

ELIJAH L. HAMLIN.

STATE OF MAINE, *Penobscot, ss:*

October 17, 1856, personally appeared Elijah L. Hamlin, and made oath that the foregoing statement by him signed contains the truth, according to his best knowledge and belief. Before me,

THOMAS N. GUMSEY,
Justice of the Peace.

Statement of David O. Parks.

I, David O. Parks, of Eaton grant, of lawful age, depose and say: That two, three, or four years before the Aroostook war, Daniel Hopkins, of Andover, New Brunswick, made a lumbering operation on the Eaton grant, and took off, according to my best recollection, six hundred tons of pine timber.

DAVID O. PARKS.

STATE OF MAINE, *Aroostook, ss:*

Taken and subscribed before me this 13th September, 1856.

N. C. TOWLE,
Agent United States Senate to take proof, &c.

Statement of James Rogers.

I, James Rogers, of Plymouth grant, of lawful age, depose and say: That I have lived on the grant about twenty-three years. When I first came there was a large amount of pine, of good quality, on the Eaton and Plymouth grants. At the time of the Aroostook war the greater part had been taken off. The operations were supplied chiefly by the province people. The British squadron had officers to look after it and collect a province duty of eight shillings per ton. Before the Aroostook war there was no claim asserted of any United States proprietors, to my knowledge.

In reference to my possession, I have not been inclined to increase my improvements from the uncertainty of obtaining title under the treaty of Washington; and I believe that others have been restrained from improvements from the same consideration; but, notwithstanding this, it is my judgment that the improvements have been increased since 1842.

JAMES ROGERS.

I also state, I knew of the commencement of Mr. House's possession, now occupied by Richard Jordan and John Buber, who bought of William Haley. The possession was commenced, I think, as early as 1834. I believe it has been improved ever since.

In 1842, to the best of my recollection, there was on this possession a clearing of as much as eight acres, and a log house and barn.

JAMES ROGERS.

STATE OF MAINE, *Aroostook, ss:*

Sworn and subscribed before me this 15th day of September, 1856.

N. C. TOWLE,
Agent United States Senate to take proof, &c.

MINORITY REPORT.

Mr. HOARD, from the Committee of Claims, submitted the following views of the minority:

The minority of the Committee of Claims, to whom was referred the petition of George M. Weston, the commissioner of the State of Maine, differing from the conclusions arrived at by the majority of your committee, beg leave to submit the following views:

This claim comes before Congress upon the petition of the said Weston, who, representing himself as the commissioner from the State of Maine to present the claims of that State under the *fourth* article of the treaty of Washington, says:

"The government of the State of Maine has instructed the undersigned, while prosecuting her [its] own claims (amounting to $——) for pecuniary indemnity for lands conveyed and to be conveyed under the treaty to settlers and holders of British grants, to ask the adoption by Congress of some comprehensive measure which shall, with the least possible delay, quiet all questions between proprietors and occupants in a territory whose growth and development have been so long retarded by controversy in respect to the northeastern boundary of the United States."

The fourth article of the treaty of Whashington, under the provisions of which this claim is presented before Congress, is in the following words, to wit:

"All grants of land heretofore made by either party within the limits of the territory which by this treaty falls within the dominions of the other party shall be held valid, ratified and confirmed to the persons in possession under such grants, to the same extent as if such territory had by this treaty fallen within the dominions of the party by whom such grants were made; and all equitable possessory claims arising from a possession and improvement of any lot or parcel of land by the person actually in possession, or by those under whom such person claims, for more than six years before the date of this treaty, shall in like manner be deemed valid, and be confirmed and quieted by a release to the person entitled thereto of the title to such lot or parcel of land, so described as best to include the improvements made thereon; and in all other respects the two contracting parties agree to deal upon the most liberal principles of equity with the settlers actually dwelling upon the territory falling to them, respectively, which has heretofore been in dispute between them."

Under this article the State of Maine claims that "questions between proprietors and occupants" of land have arisen which should be quieted by the Congress of the United States. The occupants here alluded to are or were British subjects, who had squatted upon the lands of the citizens of Maine, and most of whom had been in possea-

sion of the same more than six years prior to the date of the treaty of Washington, and now claim to have such possession "confirmed and quieted by a release" from the persons holding the legal title; or, in other words, it is claimed that parties having no legal or equitable title to land have been constituted landed proprietors by virtue of this article of the treaty, and that legal owners have been divested of their titles by the same operation.

The minority of your committee can never give their assent to a proposition they regard as monstrous, if not absurd. They utterly deny that the article of the treaty referred to was ever intended to create any new rights; its sole purpose being, in their opinion, to protect and secure rights previously existing. The reference in the treaty to "equitable possessory claims arising from a possession and improvement of any lot or parcel of land for more than six years," originated with the commissioners on the part of Maine and Massachusetts, who were the controlling parties in having the fourth article inserted in the treaty. Knowing that there was a *statute* law of Maine which did create equitable rights on the part of her citizens who had been in possession of land for more than six years, and that some of these citizens would be thrown by the new boundary line into the province of New Brunswick, it was the purpose of these commissioners to protect those rights. Hence the fourth article of the treaty, by the provisions of which all grants were to be held valid, *precisely to the same extent* as if such territory had fallen within the dominions of the party by whom such grants were made; and all equitable possessory claims arising from a possession and improvement of any lot or parcel of land for more than six years were to be held valid *in a like manner and to the same extent, and no further*. The party should suffer no injury from a change of jurisdiction. If citizens of Maine possessing an equitable claim to the land they had improved, under the liberal provisions of her statutes, this claim was to be respected, deemed valid, and be confirmed and quieted to the persons in possession, although they should fall within the province of New Brunswick. And, *vice versa*, if, under the provincial statutes of New Brunswick, British subjects had acquired equitable claims by a possession and improvement for more than six years of any lots or parcels of land, these claims should likewise be respected, deemed valid, and be confirmed and quieted, to the persons holding this equity, although they fall within the jurisdiction of Maine, precisely as they would have been respected and confirmed had the territory fallen within the jurisdiction of New Brunswick. Indeed, Mr. Webster himself, in a letter to Lord Ashburton, settles this point conclusively. He says: "Provision should also be made for quieting and confirming the titles of all persons having claims to lands on either side of the line, whether such titles be *perfect or inchoate* only, and *to the same extent in which they would have been confirmed by their respective governments had no change taken place.*" Such was the evident purpose of the negotiators, such the full scope of the 4th article of the treaty. It follows, then, if these squatters acquired no equitable claim to the land in their possession under the laws of New Brunswick, they have not the shadow of a claim under the 4th article of

the treaty of Washington, and are not entitled to a confirmation, or to have a "release of title." It is not pretended by the State of Maine that these occupants ever acquired any equitable claim under the jurisdiction and laws of New Brunswick, or that they had ever paid that province or any one else a single dollar for the land to which they now claim absolute title in fee under the operation of the said 4th article of the treaty.

In 1848 the Hon. Joseph R. Ingersoll, chairman of the Judiciary Committee in the House of Representatives, made an able report, in which he discussed the equity of the claims of those persons holding possession of lots of land within that portion of the disputed territory falling within the State of Maine. In this report he states that the provision for equitable possessory claims is understood to apply to cases where the owners of the land, now a part of Maine or Massachusetts, have paid the purchase money to the British government. This basis for an equity, and the only one which the minority of your committee can perceive, was approvingly quoted by Mr. Bradbury, of Maine, in a subsequent report to the United States Senate on the same subject.

The commissioners who were engaged in negotiating the treaty, being called on for their testimony in support of this claim of Maine, state that there was to be something more than mere possession to entitle the occupant to a grant of land. They say: "The commissioners were anxious to have these men feel when they came under the full and undisputed jurisdiction of the United States and of Maine, that they would neither be dispossessed of their property or *equitable* rights." No one seems to have dreamed that every person found in possession of land, where that possession had continued for more than six years, was to have an absolute fee simple title presented him by the government. Had such been the strange purpose of the negotiators to create rights for the benefit of the mere squatters, unknown to the laws of either Maine or New Brunswick, and not asked for in their behalf by either government, the treaty would have read very differently. It would have provided that "all persons in possession of any lot or parcel of land for more than six years before the date of this treaty shall be quieted in the same by a release," &c. It would not have limited the occupant to such rights as he would have had under his own government, nor used the terms "*equitable* possessory claims," unless there had been possessory claims, with no equity in them, and which it was the purpose of the treaty to exclude from the operation of the fourth article. The only equitable claim on the part of the squatter, recognized even by the statutes of Maine, is to the *value of his improvements* after the six years possession, and not to the fee in the land without payment to the rightful owner. An equitable title is defined to be "such a title as may be recognized by a court of equity." Have the New Brunswick squatters any such claim? The State of Maine does not pretend that they have, and yet Congress is called on by her to confirm these occupants in their possession, and divest the legal owners of their titles. A minority of your committee dissent from such a proposition, and deny that the treaty, *proprio vigore*, confirms title to

the beneficiaries under the fourth article, as held by the courts of Maine and the majority of this committee. The treaty itself, *in terms*, positively ignores the idea, by providing for the *manner* in which titles shall be confirmed and quieted, as did also the legislatures of Maine and Massachusetts when they proceeded to "take the necessary steps to carry out, on their part, the purposes and intentions of the fourth article."

But were it admitted, for the sake of argument, that the purpose of the distinguished negotiators was to give title to all persons who might be found squatting upon a lot of ground for more than six years, can it be imagined that this benevolent policy was to extend to the destruction of private rights, to divesting individual proprietors of their legal title for the benefit of mere trespassers; and yet such would seem to be the conclusion to which a majority of your committee have come.

Maine gave a construction to the fourth article of the treaty immediately after the negotiation had closed, and when all the facts and impressions were fresh in the mind. She did not then suppose it referred to lands already granted to individuals. Her commissioners appointed under the resolves of the legislature, approved February 21, 1843, to locate the lands embraced within this article, say:

"The undersigned are of opinion that the fourth article of the treaty ought *not* to be construed to extend to and embrace those lands which had been previously granted by the States to corporations or individuals, so as to divest the title from such grantees, and to give it to persons who had held by mere possession for more than six years before the date of the treaty."

Such was the conviction at that time of all the commissioners appointed by both Maine and Massachusetts, and they so stated in their official report, dated 25th December, 1844. This early construction of the treaty was fully concurred in by the authorities of those States, and was not disturbed for about ten years, when the courts of Maine sustained, under the first clause of the fourth article of the treaty, a grant from the province of New Brunswick as taking precedence of a grant from Massachusetts to the same land, (Little *vs.* Watson, 2 Maine, 214;) and then the legislature of Maine suddenly acquired new light on the subject, and on the 12th April, 1854, passed a resolve authorizing the appointment of another board of commissioners, consisting of Messrs. Hutchinson, Whidden and Pattee, who proceeded to survey and set off by metes and boundaries the lots now in controversy, but who, in their official report, added, as if by way of apology or excuse for such a proceeding, that "the title to said lands can be procured from the present owners of the fee for two dollars per acre." In another place these commissioners say "the proprietors of said townships are willing to release their title to said lots for a reasonable compensation, or exchange for other lands *belonging to the State*."

By the resolves of February 21, 1843, the commissioners are directed "to set off by metes and boundaries *all* grants; and also to set off to each settler so much land as he may be entitled to," &c.; and again, the land agent is authorized "to *convey* to said settlers by *deed*, such lands as may be set off," &c. This clearly shows the views of the

legislature of the State of Maine at that time. *All* claims were to be set off and conveyed by deed by the land agent of Maine. As this agent could only have had power to convey title to *public* land, it follows as a necessary consequence that the commissioners were confined, and properly too, according to their official report, to public lands. Such was the construction given to the fourth article of the treaty immediately after its negotiation by the commissioners of Maine and Massachusetts, as well as by the legislatures of those States. Its subsequent extension in 1854, to trespassers and squatters upon private property, was an *afterthought*, growing out of the decision of the courts of Maine before alluded to. That decision, however, was made in a case where the contest was between two legal grants, each valid within its own jurisdiction. It was merely an adjudication between claimants, neither of whom asserted *title* under the treaty. The principle laid down by the court in this case can have no application to the claim of a mere squatter or trespasser.

But let us go a step further, and for the purpose of demonstrating that Maine has not the slightest foundation for the demand she now makes upon the federal government, grant that it was the purpose of the treaty, and the intention of the negotiators, not only to secure "lots" of land to those who had no title either legal or equitable, but also to divest legal owners of title, and transfer it to the mere trespasser; yet no liability therefor rests upon the United States.

Although the United States and Great Britain were nominally the contracting parties, the real parties included both Maine and Massachusetts, who were represented throughout the negotiation by able and watchful commissioners, whose suggestions were deferred to in everything relating to their interests, and nothing was done until it had their approval. As before stated, these commissioners procured the insertion of the fourth article in the treaty for the reciprocal benefit of the settlers happening to fall on either side of the new boundary line. The commissioners of Maine required this provision to be inserted in the treaty. In their note of acceptance of the treaty they request:

"That all grants of land within that portion of the disputed territory conceded *to Great Britain*, made by Maine and Massachusetts or either of them, shall be confirmed; and all equitable possessory titles shall be quieted to those who possess the claims."

Such was the request of the commissioners of Maine, and such the provision inserted in the treaty, to secure to the citizens of Maine and Massachusetts a portion of the territory falling within New Brunswick, although these States were to receive an equivalent therefor of $300,000 from the government of the United States. As a matter of even-handed justice to New Brunswick, for this proposed adoption of a part of her territory by the citizens of Maine, the commissioners add: "And we assent to a reciprocal provision for the benefit of the settlers falling within the limits of Maine." Here we have the whole gist of this much mooted provision. After agreeing to a surrender of the territory falling within New Brunswick, for the considerations named in the treaty, Maine demands that all grants of land and equitable possessory titles of her citizens within this territory shall be

confirmed and quieted to those in possession, and as a *quid pro quo*, proffered her assent to a reciprocal provision; she now presents herself before Congress and claims remuneration or indemnity.

The action of Maine in executing on her part the fourth article of the treaty may be considered as conclusive on the point of liability. If her "assent" to a reciprocal provision devolved any liability whatever on the United States, which Congress is in equity or good conscience bound to meet, the course pursued by these States was singularly officious. Resolutions were passed authorizing, as before stated, the appointment of commissioners to carry into effect the provisions, whose duty it was to set off by met s and bounds all grants as aforesaid; and also to set off to each settler so much land as he may be entitled to, "not exceeding, however, two hundred acres to any one individual." If the United States were to be held liable for the amount of land to be thus donated, it would appear that Congress should have had some part in the transaction. The States of Maine and Massachusetts then understood the entire responsibility to rest upon themselves, and acted upon their own judgment without consulting the federal authorities.

These resolutions proceed thus: "The land agent be, and he is hereby, authorized, in concurrence with the land agent of Massachusetts, to convey to said settlers by deed such lands as may be set off to them by the commissioners aforesaid." Thus were these lands donated, set off and absolutely conveyed by deed to the settlers, without any consultation with or concurrence on the part of the United States, wholly ignoring the idea that the federal government had any interest in the transaction, or was in the slightest degree liable to Maine for indemnity.

One of the resolutions of the legislature of Maine, however, did show a purpose to fix a liability upon the general treasury, for the third of the series is in these words:

"*Resolved*, That the governor be requested to present to Congress, for allowance, an account of all expenditures incurred by this State by virtue of the provisions of these resolves."

The United States having agreed in the treaty to pay certain expenses, including the expenses of Maine in defending the territory, and the expenses of surveying, &c., this charge on the part of Maine was considered within the fair interpretation of the treaty, which provides that certain specified expenses shall be paid by the United States, and the account was accordingly paid. But, at that time, not even the State of Maine thought of the general government being chargeable with the land her commissioners were setting off and deeding to the occupants, under that "reciprecal provision" of the treaty which she had, in her *justice* and *magnanimity*, assented to, and had inserted in the treaty.

The governor of Maine in a letter to the lieutenent governor of New Burnswick, dated March 23, 1843, says: "I have requested Mr. Eastman to proceed to Frederickton for the purpose of obtaining such information as will enable the commissioners of this State to execute, *on their part*, the provisions of the fourth article of the treaty of Washington."

Here is an official recognition of the fact that the fourth article of

the treaty not only had to be executed, and therefore did not operate *proprio vigore*, but that its execution devolved upon the States of Maine and Massachusetts and not upon the United States.

The information sought by the governor of Maine being refused him by the lieutenant governor of New Brunswick, the former addressed a communication to the Secretary of State of the United States, under date of June 16, 1843, in which he says:

"I have the honor to enclose a copy of the resolves passed by the legislature of the State of Maine at its last session, for the purpose of executing, *so far as Maine is concerned*, the provisions of the 4th article of the treaty," &c.; and then he closes by asking the "*interference* of the general government" to enable him to procure the needed information from New Brunswick.

These quotations prove, beyond a doubt, the view taken of the question of *liability* by the authorities of Maine immediately after the negotiation, and while they were proceeding "to execute on their part" the provisions of the 4th article of the treaty. Even the assistance asked of the Secretary of State of the United States is styled by the governor of Maine an "*interference* of the general government"—a term of grave import, and here used in its broadest sense. It had not then entered the mind of any one that the interference was on the part of Maine, and that the federal government was the real party in interest, and alone responsible and liable under the 4th article of the treaty. Maine had demanded to have her grants and the equitable possessory titles of her citizens respected, though falling within the territory of New Brunswick, on condition that the favor should be reciprocated when British subjects fell within her own borders. But can it be supposed that in yielding to this demand of Maine, by which she aimed to absorb a portion of the identical territory for which she had been paid by the United States, that the latter assumed the responsibility to indemnify her for any lands she might donate and set off to occupants under the reciprocal provision assented to when presenting her demand? Was it supposed that this generous assent of Maine, freely tendered, to treat British subjects, falling within her own territory, precisely as she claimed her own citizens should be treated in New Brunswick, was to cost the federal treasury several hundred thousand dollars? This would indeed be being just if not generous at another's cost.

But a still more conclusive evidence of the fact that Maine did assume the liability incurred under the 4th article of the treaty, will be found in the second series of resolutions passed by the legislature of that State. These resolutions not only increase the amount of land donated to settlers in possession for more than six years, but authorize the commissioners of the State to charge another class of settlers under the treaty "such sum as they may deem just and equitable, and receive in payment for said land labor on the roads or cash, at their discretion." This would hardly be deemed a very dignified, if legitimate, mode of executing the provisions of a treaty, if indeed the United States were bound to confirm these possessory claims and have released to the occupants the legal title. As the agent of the United States, would Maine have undertaken to sell her own lands,

charge the occupants, and take the pay in *labor on the roads?* Acting as she did for herself, and solely in her own behalf, no one has a right to complain if her own citizens are satisfied.

It appears evident, then, to the minds of a minority of your committee, that whatever responsibility or liability has been, or may be incurred, in carrying out the provisions of the 4th article of the treaty, it rests upon the States of Maine and Massachusetts, and not upon Congress.

Secondly. That the said 4th article of the treaty was never intended to effect legal titles of proprietors, unless the person in possession held under a *grant* of the government whose jurisdiction was annulled by it.

Thirdly. That it was not the purpose of the negotiators to create new, but only to protect existing rights. They therefore insist that under the treaty of Washington, the claim of Maine now under consideration in behalf of certain of her citizens has no foundation in equity or justice, and should be rejected by Congress.

Thus far the minority of your committee have discussed only the relative liabilities of the State and federal governments, under the provisions of the *treaty;* and so far as the claim for "timber" is made *under the treaty*, it has no better standing than the claim for land, which we have attempted to show was groundless.

C. B. HOARD.
SYDENHAM MOORE.
ALFRED ELY.
JOHN A. McCLERNAND.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 459.

CAPTAIN J. H. ESTES.

[To accompany Joint Resolution No. 37.]

APRIL 20, 1860.

Mr. S. MOORE, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of Captain J. H. Estes, have had the same under consideration, and report:

The evidence shows that the petitioner, in the absence of proper and sufficient mail facilities between Vicksburg, in the State of Mississippi, and Ashton, in the State of Louisiana, did, for a considerable period of time between the years 1849 and 1854 inclusive, carry and deliver the United States mails between the said points, and supply with mail matter several intermediate points along the said route. Your committee, however, have not the means of properly estimating the value of the services rendered by the petitioner, but think he should be compensated therefor, and should be settled with upon principles of equity and justice. They therefore report the accompanying joint resolution, and recommend its passage.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 460.

EPHRAIM HUNT.

[To accompany Bill H. R. No. 677.]

APRIL 20, 1860.

Mr. TAPPAN, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of Ephraim Hunt, have had the same under consideration, and beg leave to report:

This claim is for the pay and bounty alleged to be due to the petitioner for services as a soldier in the war of 1812. It has twice received the favorable action of the Senate, but in both instances failed to receive the final action of the House of Representatives. The case is well stated in the report made to the Senate at the 1st session of the 33d Congress, (No. 359,) as follows, viz:

The evidence in this case presents the following facts: In December, 1812, Mr. Hunt enlisted at Topsham, Maine, as a private in the service of the United States, as a volunteer for one year, and went, with his company, to Plattsburg, New York. He remained in the service until the 25th September, 1813, when he re-enlisted into Captain Buck's company, United States army. This enlistment, according to his own affidavit, and the affidavits of John Dusten and Daniel Greenlee, who swear that they were present at the time of the enlistment, and personally cognizant of the fact, was distinctly stated and understood at the time to be for "during the war," and not for "five years." It was, however, held by the officers to be for five years. He continued in the service until the 14th September, 1815, when the war being closed, he claimed that his term had expired, and requested his discharge, which was refused on the ground that the enlistment was for five years.

Believing, as he says, that he had faithfully served out his term of enlistment, he left the army without his discharge, and withont having received either his bounty or any pay for the time he had served. The accounting officers decided, on his application for pay, that he had forfeited all claim on the government by the act of desertion.

He is now in necessitous circumstances, advanced in years, and deprived of the use of his hands by the loss of his fingers, and prays that Congress will cause his pay and bounty, for services rendered in fighting the battles of his country in time of war, be allowed him.

The committee are of opinion, from the evidence presented, that

when he enlisted, it was his understanding and intention to enlist for the period of the war, although, by some error, he was enrolled for five years. That upon the termination of the war and the restoration of peace to the country, he thought he had faithfully complied with his engagement, and, under that belief, left the army. The committee do not intend to sanction or excuse the course he adopted, but think he should have remained in service until he could have obtained his regular discharge; still, under the peculiar circumstances of the case, and in view of faithful services rendered during the war and till some time after its close, they are of opinion that the government ought not to withhold from the old soldier the small pittance to which his previous patriotic services had entitled him. They therefore report a bill for his relief.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 461.

SAMUEL PERRY.

[To accompany Bill H. R. No. 678.]

APRIL 20, 1860.

Mr. S. MOORE, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of Samuel Perry, have had the same under consideration, and report:

That the claim has been several times presented to Congress, and always reported on favorably by this committee. The petitioner undertook, by written agreement, to transport a large quantity of Indian supplies "from some point on the Ohio river not higher than Cincinnati, to Fort Coffee, Arkansas." A portion of the supplies was lost by the sinking of the boat on the Mississippi river, for which loss $638 98 was deducted from the freight. The proof is clear that the loss was not on account of any negligence or want of care on the part of the carrier; and as, by agreement between the government and the petitioner, the freighter was to be chargeable only for damages which could be avoided by ordinary care and attention, the committee are of opinion this amount was improperly deducted, and they therefore report a bill for the amount and recommend its passage.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 462.

REIMBURSE CORPORATION OF GEORGETOWN CERTAIN MONEYS.

[To accompany Bill H. R. No. 679.]

APRIL 20, 1860.

MR. CARTER, from the Committee for the District of Columbia, made the following

REPORT.

The Committee for the District of Columbia have had under consideration the bill "to reimburse the corporation of Georgetown, in the District of Columbia, a sum of money advanced towards the construction of the Little Falls bridge," and beg to submit the following "report," prepared by Mr. Goode, during the thirty-fifth Congress, concurring in the same:

In the month of March, 1853, the sum of thirty thousand dollars was appropriated by Congress for the construction of a bridge over the Potomac river, at a point known as the Little Falls, and the work was placed in process of construction, under the direction of George Thom, captain in corps of topographical engineers.

In the fall of 1853, when the work had been prosecuted near to completion, the appropriation was found to be exhausted—the sum of thirty thousand dollars having been expended—and it became necessary to suspend operations until other funds could be procured applicable to the object.

It was supposed that several months must pass before an additional appropriation could be expected from Congress; and the abandonment of the work, in an unfinished condition, at the approach of winter, must expose it to serious injury, whilst its suspension would involve a necessity for a sale of the stock on hand, by which the government would suffer a heavy loss. To avoid these evils, the officer in charge, on consultation with the Secretary of the Interior, applied to the corporate authorities of Georgetown to advance a sum of five thousand dollars, which would enable him to continue his operations, and carry forward the bridge to a condition in which it might be used for travel during the then following winter. This proposition was acceded to, and, by several acts of the corporation, the sum of five thousand eight hundred dollars was placed to the credit and subject to the order of

Captain Thom, to be expended in the construction of the Little Falls bridge, his assurance being given, with the consent of the Secretary of the Interior, that the amount should be reimbursed to the corporation of Georgetown when the further appropriation should be made by Congress. It also appears that some lien on the stock on hand was executed in favor of the corporation of Georgetown, as a security for the reimbursement of the amount advanced; but it is believed that nothing was realized by the corporation from this lien, the entire stock having been applied to the uses of government.

In August, 1854, Congress appropriated a further sum of fifteen thousand dollars for completing the bridge; but a serious accident had befallen it, which created a necessity for the appropriation of a large sum, and the corporation of Georgetown postponed its claim for immediate payment, unwilling to delay the completion of the work; accordingly, the sum of thirteen thousand eight hundred dollars, part of the appropriation of fifteen thousand dollars, was applied towards the completion of the bridge, leaving a balance of twelve hundred dollars, which was applied towards the payment of the sum of five thousand eight hundred dollars, leaving the sum of four thousand six hundred dollars due to the corporation of Georgetown; for the payment of which a bill is herewith reported.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 463.

ELI W. GOFF.

[To accompany Bill S. No. 113.]

APRIL 20, 1860.

Mr. MAYNARD, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred Senate bill No. 113, *"for the relief of Eli W. Goff," have had the same under consideration, and beg leave to report:*

That the claimant was a deputy collector of customs in the northern portion of Vermont, and by great energy succeeded in breaking up a powerful gang of smugglers. The result was a series of annoyances and costly litigation forced upon the petitioner, through the influence and procurement of the parties whose illegal though profitable employment he had broken up. Even the property he had lawfully seized under the revenue laws was again wrested from him by the connivance of the United States district attorney, who dismissed the suits for forfeiture, and, in lieu thereof, involved the petitioner in law which eventually resulted in his pecuniary ruin.

At the first session of the last Congress this claim was fully investigated, and a bill passed authorizing the Secretary of the Treasury to audit and pay whatever he might ascertain Mr. Goff's losses to have been, limiting the amount, however, to five thousand dollars, although the claim was for near thirteen thousand dollars. The Secretary of the Treasury, finding a difficulty in bringing the evidence within the strict rules of the department, failed to fix upon any amount, and the Senate bill now before your committee determines the amount arbitrarily, at thirty-five hundred dollars.

As from the very nature of the circumstances surrounding this claim, the evidence would be informal and incomplete, so as not to be within the rules established by the executive departments, yet your committee are satisfied that the losses and sacrifices of Mr. Goff have been much larger than the amount named in the bill, nevertheless, they report the bill back without amendment, and recommend its passage.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 464.

FRANKLIN PEALE.

[To accompany Bill S. No. 189.]

APRIL 20, 1860.

Mr. TAPPAN, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the Senate bill (No. 189) "for the relief of Franklin Peale," have had the same under consideration, and beg leave to report:

That the following report states fully and clearly all the facts of the case, and your committee therefore adopt it as their own, and report back the bill, and recommend its passage:

From 1833 to 1854 the memorialist was employed in the United States mint, at Philadelphia, occupying successively the positions of assistant assayer, melter and refiner, and chief coiner, all places of high trust and responsibility, and which appear to have been filled by Mr. Peale with great credit to himself and advantage to the government. During this period, as clearly appears from the papers in the case, Mr. Peale invented and brought into practical use many valuable improvements in the machinery and processes applicable to the refining and coining the precious metals.

The following are amongst the improvements introduced by Mr. Peale, for which compensation is claimed, viz:

First. The use of common salt in reducing silver from its solution in nitric acid.

John J. Morrell, foreman of the refinery, certifies that when Mr. Peale became melter and refiner, in 1836, in consequence of the necessity of precipitating silver by copper, the only process then in use, it was unhealthy and deleterious, so much so as to make it impossible to remain in the room and breathe the fumes without the risk of life. Soon after Mr. Peale came into the office he introduced improvements in the processes of refining, particularly the precipitation by salt and the recovery of fine silver by zinc and sulphuric acid, by which means the troubles above mentioned were entirely overcome, and much greater facility given to the operation, both in regard to the economy and rapidity, which process still continues to be employed.

Professor Booth, the present melter and refiner, says: "The improvement which you (Mr. Peale) justly claim, of precipitating the chloride by common salt, instead of by muriatic acid, which the chemist employs on a small scale, was a positive advance in the whole process, in economy of material and apparatus, and in convenience of execution. By means of this improvement I was enabled to employ wooden vessels, instead of the more costly stoneware and porcelain, when the subsequent influx of California gold assimilated our operations to those of an ordinary manufacturing establishment, and demanded precisely such an improvement. By means of this improvement I have recovered a ton of silver in a single day, after its employment in refining gold."

Second. Invention and construction of machinery.—Devising and directing the construction of a power-press for coinage, and the application to it of steam power; the invention and construction of a milling machine, moved by steam power, which is now in use at all the mints; the invention of a laying and piling box, &c.

On this head Mr. Bale, late treasurer of the mint, says: "An official service of several years as treasurer of the mint afforded me frequent opportunities to admire the perfection of the apparatus and machinery of that establishment. My own observations, and the concurrent testimony of my associates, left no doubt on my mind that to [Mr. Peale] the country is mainly indebted for the perfection thus realized. I then learned, and firmly believe, that it was [his] inventive skill that planned and supervised the execution of nearly every part of the machinery which adorns the mint, among which I may refer, as examples, to the steam coining presses, the milling machine, the rolling-mills, the piling board, and the small and large engines."

Mr. Eckert says: "As director of the mint, I had ample opportunity of becoming familiar with his (Mr. Peale's) extraordinary inventive genius, and the facility with which he overcame and surmounted all the mechanical difficulties as they would present themselves, in the practical application of his inventions and improvements. In the substitution of steam instead of hand power to the coining presses alone he has saved thousands upon thousands to the government, and it is but just that he should receive some compensation, especially as he has never availed himself of the patent laws."

Judge Kane, chairman of the assay board of the mint, says: "I have no hesitation in saying that Mr. Peale's improvements in the machinery alone, not to speak of the processes which he introduced, have saved the government hundreds of thousands of dollars."

George Eckfeltd, foreman of the machine shop of the mint, states that Mr. Peale, while he held the office of melter and refiner, drew the plans and directed the construction of the first press used in the mint for coinage by steam; for the engine employed in propelling the coining and milling machines; for the steam milling machine, and laying and piling boxes, all original inventions; and that he furnished designs and drawings and directed the construction of the machinery for the branch mints generally; and, finally, that most of the improvements referred to are entitled to the merit of original inventions.

From these and other statements before the committee, it is clearly apparent that the mechanical skill and genius of Mr. Peale contributed largely to the state of perfection to which the mechanical operations of the United States mint has attained. When he entered the mint, in 1833, its capacity for coining was about $3,000,000 per annum, and when he left it, in 1854, its capacity was equal to $60,000,000 per annum. It was, evidently, no part of Mr. Peale's duty, as melter and refiner, to make the drawings and superintend the construction of the engines and machinery of the mint and its branches, and much less was it any part of that duty to give the government the great benefit of his rare inventive genius, by the application of which the mint of the United States has attained the reputation of being the best appointed mint in the world.

It is believed to be shown that many of the improvements introduced into the machinery of the mint were original inventions of Mr. Peale, and as such subject to be patented as his private property. But as these inventions were mainly useful in mint operations, his sense of honor did not permit him to appropriate to his exclusive private emolument the improvements required for the efficient operations of the mint, of which he was an officer, and with the honor and reputation of which he felt himself identified.

But as he has now retired from office, and is in need of the fruits of his labors, now enjoyed by the United States, for the support of his declining years, the committee are of opinion that it would not become a liberal and enlightened government to withhold a just and reasonable compensation for such long-continued, valuable, and meritorious services.

Mr. Peale submits the following estimate of the value of his inventions and services, for which no compensation has been received, viz:

For improvements and inventions in refining	$5,000
Apparatus in saving and concentrating sweep	5,000
Coining presses, mint machinery, &c.	15,000
Services, not official, in making mint machinery and apparatus for branch mints	2,500
Use of the above processes and machines at the branches and offices	2,500
Total	30,000

In submitting this estimate, Mr. Peale says: "This estimate is made under the acknowledged conviction that it is entirely optional with the government to withhold any recompense, and that no claim could be established by law. Nevertheless, it is confidently affirmed that if I had, according to present usage, protected myself by securing the benefit the laws of the United States would have conferred, I should have demanded from four to ten times the amount, according to the circumstances and the exigencies of the particular case and time."

The memorial and accompanying "memorandum" of Mr. Peale, which are believed to present a fair and truthful statement of the grounds of the claim, are hereto annexed.

Believing that the services of the memorialist, beyond the proper sphere of his official duties, have been of essential and paramount value to the United States, the committee think that he is equitably entitled to some remuneration. But in view of the fact that the improvements were carried out and perfected at the expense of the government, they are not prepared to recommend the allowance of the full amount of their value, as estimated by the claimant and other officers of the mint. They have, therefore, come to the conclusion to report a bill, allowing the sum of $10,000 as a full compensation to the memorialist for all his inventions and extra official services in connection with the United States mint and its branches.

To the Senate and House of Representatives of the United States in Congress assembled:

The memorial of the undersigned, Franklin Peale, of the city of Philadelphia, respectfully showeth:

That from the year 1833 to the close of 1854 he was engaged in the service of the United States, in the various capacities of assistant assayer, melter and refiner, and chief coiner of the mint.

That during the time of such official relation to the government he was the author of many original inventions and improvements in the machinery and processes applicable to the refining and coining of the precious metals, for a detailed statement whereof he refers to the memorandum hereunto annexed, which he asks to have received as a part of this memorial.

That these inventions and improvements were of such novelty and utility that he could have protected himself in the ownership thereof under the patent laws, but, in view of his official relations, he declined to do so, and consented to the gratuitous use thereof in the mint and branch mints of the United States. And although a change in his official relations has since taken place, which obviates the objections which might otherwise have been taken to his availing himself of his rights of patent, yet the lapse of time and the public use of his inventions and improvements have, as he is advised, debarred him from adopting that course.

Your memorialist avers that these inventions and improvements, and other extra official services performed by him, were of great pecuniary value to the Government, both directly and indirectly; that he has never received any compensation therefor, and that such compensation is justly due.

Wherefore your memorialist respectfully prays that an appropriation be made by your honorable body, in such sum as you may deem adequate for his remuneration, for the services thus gratuitously rendered to the government; such remuneration to be accepted by him in full for all further claims against the government or the public by reason of the inventions, improvements, or services in question.

And your memorialist will ever pray, &c.

FRANKLIN PEALE.

Memorandum of the services of Franklin Peale, late chief coiner of the mint of the United States, which he deems extra official, of which the government has hitherto and now enjoys the benefit, and for which he has rceived no compensation.

Mr. Peale was employed on a special mission to Europe "connected with the affairs of the mint," with the title of assistant assayer. His instructions were dated May, 1833. He returned from his mission in 1835, and reported in full in writing, accompanied by drawings, on all the numerous and important matters that were deputed to him, and much more, and subsequently aided in introducing into practice all and every art and process deemed of value in the various departments of the mint. For these services no further compensation was ever or is now asked or expected. But other services, not connected with the foregoing, extra official in character, and for which he has received no compensation, were subsequently rendered by him, and will be as briefly as possible stated, as follows:

Whilst melter and refiner of the mint he introduced the new and most important process, still practiced in the mint and its branches, &c., of reducing silver from its solution in nitric acid by precipitation with chloride of sodium and its recovery by zinc and sulphuric acid.

The general principles of this process were communicated to him and practiced in the refinery of P. N. Johnson, of London; but the use of salt was proposed by Mr. Peale, and employed with great advantage in economy and otherwise over muriatic acid, which had been previously employed.

This process was entirely unknown and not included in the instructions above referred to. It was the acquisition of private and unofficial friendly relations, and partly original with Mr. Peale. It possessed the advantages of freedom from noxious vapors, and the return of pure silver, so useful in mint operations, over the famed sulphuric acid process, for a knowledge of which a fee of 50,000 francs was asked by the principal refiner of Paris, and for which an appropriation of 10,000 francs was subequently made and transmitted to Mr. Peale, but not used, and therefore saved to the government.

A full description, with illustrative drawings of the sulphuric acid process, are embodied in the report of Mr Peale.

The zinc process, so comparatively valued, and put in practice by Mr. Peale in 1835–'36, continues still in use in the various refineries of the mint and its branches, &c., an undoubted proof of its applicability and value.

Whilst melter and refiner Mr. Peale devised and directed the construction of a power-press for coinage, and applied steam to its propulsion by means of an engine constructed by him, which engine remains to this day a model of perfection of workmanship and efficiency.

The press referred to has been improved and perfected during the long series of years that have since elapsed, until its efficiency is such as to place the presses of the mints of the United States far above those of the most advanced governments of the world, and they are now in

use in all the establishments of the Union, and in other or others in South America.

Patents for the various improvements in the operative parts and general design would have secured to the inventor the benefit of his labors; no such protection has ever been sought, and the parent mint, as well as all others, have the sole benefit.

It may not be improper at this point to state that the buildings, machinery, and apparatus of the branch mints at New Orleans, Charlotte, and Dahlonega, have been constructed and put in operation, in a great measure, under the advice or direction of Mr. Peale, although not embraced in any of the duties prescribed by law as appertaining to the chief coiner.

Whilst melter and refiner Mr. Peale invented a milling machine, moved by steam-power, in place of the very imperfect and inefficient hand machines, the only ones previously known in the mint; which machines he improved and perfected, until their efficiency is now such as to remove all impediment to the most rapid execution of this previously tedious process—an idea of which may be given by the statement that eight hundred pieces of the smaller denomination of coins per minute do not by any means limit the capacity of one machine.

For the purpose of meeting the necessity of rapid supply to the above-mentioned machines, and for other purposes very important in the manipulation of coin during its preparation, Mr. Peale invented the laying or piling box, a machine by means of which, in almost momentary time, planchets and coins may be laid in roleaux or piles, affording great facility for the above purposes, and producing in its use an effect more like that of magic than an ordinary one of simple agitation.

The Commissioner of Patents, soon after its invention, on witnessing the operation of this machine, urged the inventor to patent it both in this country and Europe; but, in accordance with the principles which have always governed his action whilst in office, he refrained from so doing, has never received any pecuniary benefit from his inventions, and has in consequence lost the protection that the law of patents would have insured to him.

At a very early period Mr. Peale became aware of the imperfect adaptation of the annealing furnaces of the mint, and from his knowledge of the forms of those used in the principal mints of Europe, and unsatisfactory trials of the best, he was induced to invent and erect others of entirely original forms, which have proved eminently successful, and are now in use in the various establishments of the government.

The counting board, in its primitive form, was patented by the administrator of the late R. Tyler, of the New Orleans branch, and the right purchased for use by the mint. The above-named coiner was familiar with the original counting machine of Mr. Peale, a model of which is now, or was lately, preserved in the mint, made many years previously, which embraces the general principles of the machine.

The counting board was subsequently, and to a very marked extent, improved by Mr. Peale, and all the fixtures in connexion with it are

original with him. The facility and certainty with which it operates have been of incalculable value to the mint. It is only necessary to refer to that period when the passage of the "silver bill" caused a coinage of the smaller denominations of silver money, entirely unprecedented in mint affairs, the whole coinage amounting in 1853 to sixty-nine and three-fourths millions of pieces. Nearly the whole labor of counting this enormous number was performed by two or three females and one man; without the intervention of the counting table, it would have required the labor of thirty-five or forty experienced counters to have met the exigencies of the service; in one day of twenty-two out of twenty-four consecutive hours eight hundred and fourteen thousand pieces were coined and counted, giving a striking illustration of the truth of the above statement.

Without the aid of the fixtures under notice, the enormous labor of the period referred to could not have been performed without a correspondently increased manual force, thereby increasing the expense and liability to error, and augmenting in an equal ratio the liability to another and greater evil, too obvious to need remark.

The balances for weighing the precious metals and other mint operations have received the devoted attention of Mr. Peale from the period of his first connexion with the mint; those of the best construction then known were unsatisfactory, and it was after years of laborious experience and careful study that he was enabled to perfect them so as to give uniform and certain, as well as delicate results to the weighings, upon the integrity of which all the value of mint operations depends, both as it regards its interior relations and those to the community at large. His efforts in this department have proved that the operations on heavy masses in weight, and of course in value, can and have been made more accurately than when divided into smaller amounts—a fact that cannot be overestimated when such enormous values are under manipulation. They amounted in the coining department alone, in one year, to ninety-four millions of dollars, in gold only; in the weighing of which, economy of labor was all important, but to which may be added increased security from error.

The balances of the mint thus perfected were not only entirely satisfactory in use, but have served as models of construction; although original in design, and peculiar in detail, their use has been freely given to the mint and the public, a full description having been published by Mr. Peale in the July number of the Journal of the Franklin Institute of the State of Pennsylvania for the year 1847.

The exigency caused by the influx of gold from California was required to be met; for this purpose Mr. Peale designed and executed, under his superintendence, a steam-engine and rolling-mill of peculiar construction, adapted to their specific objects. The rolling-mill being new in design, dispensing entirely with the expensive gearing usually connected with them, and furnished with wheel work and dial plates for the regulation of the slips of rolled metal, giving greatly increased facility, as well as accuracy, to this important operation.

The engine possesses novelties of form specially adapted to the object of its construction, and has been furnished with a "throttle-valve" of original form, devised by Mr. Peale to control its speed during the

irregularities inherent in the rolling operations—a desideratum that was never before accomplished, although the best mechanicians have long made it their study, and numerous patents have been granted by the office for arrangements whose objects are those above stated.

For the purpose of reducing to its minimum the inevitable "*wastage*" attendant on the working of the precious metals, Mr. Peale invented an apparatus for filtering and recovering the minute particles usually lost by floating away with the water and other media employed in the washing, cleaning, and whitening of the coin during preparation, and for the purpose of concentrating and recovering the precious metals from the "*sweep*" of the establishment.

No exact value estimate can be made of this apparatus. It is sufficient to state, as a striking and significant fact, that a trial of it, in an incomplete state, in December, 1851, gave a saving of $271 62 worth of metal, during a period of ten months, from the washing of the hands of the female "adjusters" of coin.

The operations of the year 1852 amounted to $91,297,460 in the chief coiner's department, the legal limit of "*wastage*" on which was $136,946 19, the actual wastage only $7,246 14. This extremely small ratio of loss may very justly, in a great measure, be attributed to the use of the apparatus referred to, and is cited in evidence of its value to the institution.

FRANKLIN PEALE.

CITY OF PHILADELPHIA, *ss:*

Sworn and subscribed before me April 22, 1856.

JOHN THOMPSON, *Alderman.*

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 465.

WILLIAM P. BOWHAY.

[To accompany Bill S. No. 373.]

APRIL 20, 1860.

Mr. TAPPAN, from the Committee of Claims, made the following

REPORT.

The Committee of Claim, to whom was referred the Senate bill No. 373, *"for the relief of William P. Bowhay," have had the same under consideration, and beg leave to report:*

That the claimant was in the employment of the United States as a ship carpenter on board the United States ship "Congress," then lying at the navy yard in Washington, in the year 1816. While engaged in the discharge of his duty the scaffolding erected on the ship gave way, and the petitioner was precipitated into the hold of the vessel, and so severely injured that he has been a helpless cripple to the present time. He is now very old, and, as the committee in the Senate say, "a pitiable object, appealing strongly to sympathy." As the injury was received in the public service, and as the pittance allowed will render the old man comparatively comfortable for the few remaining years of his life, your committee report back the bill without amendment, and recommend its passage.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 466.

AARON H. PALMER.

[To accompany Bill S. No. 111.]

APRIL 20, 1860.

Mr. TAPPAN, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred Senate bill No. 111, *"for the relief of Aaron H. Palmer," have had the same under consideration, and beg leave to report:*

That in January, 1848, at the request of the honorable Robert J. Walker, then Secretary of the Treasury, the claimant came to Washington and laid before the government certain manuscript documents he had prepared relative to the independent oriental nations, and more especially Japan, and their capacities for a profitable American commerce. Subsequently, Mr. Palmer was employed by the honorable J. P. Kennedy, then Secretary of the Navy, to prepare information and instructions for the North Pacific exploring expedition. This information included fourteen different documents, one alone, covering four hundred and sixty pages of foolscap, with an illustrative map. The evidence also shows that to Mr. Palmer is due the origin of the Japan expedition, which has lately terminated so happily in a treaty of amity and commerce with that empire. He planned the expedition and furnished Commodore Perry with his instructions and information. The commodore received a gratuity, at the hands of Congress, of twenty thousand dollars. Mr. Palmer has never received one cent. He has also furnished our government, from that time, with a constant fund of rare and valuable information acquired by years of toil and hard study, and which has shaped our commercial relations with Persia and other oriental nations, for which he has received no compensation. The bill from the Senate allows the claimant ($3,000) three thousand dollars, and although your committee deem this a very inadequate compensation for the services, they report it back without amendment, and recommend its passage.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 467.

MICHAEL L. BAILEY.

APRIL 20, 1860.—Ordered to be printed.

Mr. STOKES, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Michael L. Bailey, have examined the same, and report:

That it appears from the evidence that the petitioner did meritorious service for thirty years, and was honorably discharged; but that, he alleges, no disability ever having been received in the service, and none since, except old age. He asks for a pension solely on the ground of long service and old age. Your committee concur in the opinion that they cannot grant or recommend pensions for *service* alone, and that, as no disability incurred in the service is alleged, they recommend that the prayer of petitioner be not granted.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 468.

RANDOLPH J. SHOEMAKER.

APRIL 20, 1860.—Ordered to be printed.

Mr. STOKES, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the memorial of Randolph J. Shoemaker, have examined the same, and report:

That the petitioner's father was in the service in the war of 1812 about one month; was thrown from his horse while in the service, receiving an injury from which he died in 1828. His widow (petitioner's mother) applied to the Pension office for a pension, which was refused—on what ground is not stated. The widow is now dead, and the son now asks that a pension be granted him and the other heirs. The committee are of the opinion that the case is outside of all law and entirely unprecedented, and desire to be discharged from the further consideration of the petition.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 469.

DANIEL REYNOLDS.

APRIL 20, 1860.—Ordered to be printed.

Mr. STOKES, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Daniel Reynolds, respectfully report:

That they have examined the case, from which it appears that petitioner was hired as a substitute in place of Moses Lyon, in Cayuga county, New York, marched to Buffalo under Captain E. C. Marsh, afterwards volunteered to go to Greenbush to guard deserters and prisoners, &c.; that from exposure he incurred disease and sickness while in the line of his duty, all of which is proved by several witnesses. Application to the Pension office in 1852 and 1853, was refused, on the ground that the name of petitioner was not to be found on the rolls in any company or regiment referred to by said petitioner, and now, by his attorney, petitions Congress for relief.

Your committee not having any evidence that petitioner was honorably discharged, and his name not appearing on any roll, cannot grant the prayer of the petitioner, and ask to be discharged from the further consideration of the petition.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 470.

MAURICE R. SIMMONS.

APRIL 20, 1860.—Ordered to be printed.

Mr. STOKES, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Maurice R. Simmons, have had the same under consideration, and report:

It appears that the petitioner was employed in 1847 by General Z. Taylor, during the war with Mexico, in the service of the subsistence department, to furnish the army with fresh beef at Ceralvo. The contract was entered into at Monterey, and as the petitioner and his partner, escorted by some United States troops, were passing from the latter to the former place, when near Ceralvo, the petitioner received a shot in his thigh, from the effects of which his leg was amputated; his horse was also killed. He was otherwise serviceable. In 1848 Congress by special act granted him a pension at $8 per month. He now asks that it be increased. Your committee are of the opinion that, as he did not belong to the army and was there in a speculative capacity, they cannot recommend an increase of his pension, and ask to be discharged from the further consideration of said petition.

36TH CONGRESS, 1st Session } HOUSE OF REPRESENTATIVES. { REPORT No. 471.

WM. HAZZARD WIGG—CLAIM FOR SLAVES TAKEN BY THE BRITISH IN THE REVOLUTIONARY WAR.

APRIL 20, 1860.—Ordered to be printed.

Mr. WALTON, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred joint resolution No. 4, in relation to the account of William Hazzard Wigg, have carefully considered the same, and report:

That the claimant alleges an error in the report of the House Committee on Revolutionary Pensions, No. 176, first session of the thirty-second Congress, on which was based an act for the relief of William Hazzard Wigg, approved March 3, 1853. The alleged error is in the amount of one item in an account stated in the printed report, as follows:

"Ninety-six negroes, at $390 per capita, (the rate of assessment of act of legislature of South Carolina in payment of Sumpter's brigade,) $35,880."

It is apparent that 390 multiplied by 96 gives a sum 1,560 greater than that stated in the report. Wigg, therefore, claims $1,560 to be due him; and, in apparent confirmation, we find that the Senate committee appears by its printed report to have allowed for the same number of negroes at $300 per head, and to have carried out the result from such data correctly. On this statement of the case, a resolution was adopted by Congress, approved February 2, 1859, authorizing the Secretary of the Treasury to ascertain and pay the alleged clerical error; but the Secretary declined to go back of the act of 1853 for any such purpose. This resolution passed the Senate unanimously, without reference, on a declaration that a clerical error existed. In the House the resolution was referred to the Committee of Claims, and on the averment of error and an examination of the printed reports alluded to, the committee reported favorably, and the resolution was concurred in.

On the same ground Wigg now asks for an absolute appropriation of $1,560, without reference to the Treasury Department, declaring that "if any power is given to the Secretary to 'reopen,' 're-examine,' and 'readjust,' *there is no telling* what new obstacle may be discovered by which to defeat the intention of Congress and the reparation of the injury to the claimant."

The Senate and House reports on which the act of 1853 was founded are substantially one, with the exception of the item in

question; and Wigg admits that *he* drew or copied the paper which was thus used in common by the committees of both houses. The reports, therefore, are not conclusive proof as to what the error was. It might have been an error in the number of the negroes, and that error may have been common to both copies of the report. Moreover, the House report states "a rate of assessment of act of legislature of South Carolina," on which the item depended. Your committee therefore determined to go to the original papers from which the reports of the thirty-second Congress were made, and in these they discovered a very satisfactory explanation.

Wigg stated the South Carolina "rate of assessment" in his brief and argument thus:

"Taking for the valuation of the negroes the authority of an act of the legislature of South Carolina, passed about the same period, for the payment of Sumpter's brigade, in which the value of prime negroes is placed at £80, and inferior negroes at £40, and the proportion of the one to the other at nine one-hundredths:

"90 prime negroes, at $400	$36,000
"6 inferior negroes, at $200	1,200."

Accompanying the papers was also a full statement of the account, in Wigg's handwriting, in which the South Carolina rate was more correctly applied, the pound being reduced to $4 88, and the allowance of nine per cent. for inferior negroes being stated. The items in question were thus stated:

"88 prime negroes, worth $390 per capita	$34,320
"8 inferior negroes, worth $195 per capita	1,560."

These items added together make precisely the ninety-sixnegro es, worth $35,880, as stated in the first item of the report of the House committee of the 32d Congress. We find, therefore, that Wigg committed an error when he drew or copied the report, by stating the value of the ninety-six negroes to be $390 per head, whereas the fact was that eight of the ninety-six were to be charged at $195 per head; that this error entitles him to no "relief;" and that, in point of fact, he has already received the full price he charged, and all that was intended to be allowed by the act of 1853. Your committee are unanimously of opinion that joint resolution No. 4 ought *not* to pass.

After this conclusion had been reached by the committee, and Wigg had learned that the adverse opinion was based upon papers in the Treasury Department, he made specific charges against that department, as follows:

"1st. I deny that any calculations were ever made, in either of the committees of Congress, anterior to the passage of the act of 1853, having in view the assessment of the slaves lost at different valuations.

"2d. All such calculations now shown of that nature are the works of officials of the treasury, made subsequently to the passage of the act, and with a view of defeating this present resolution."

Another letter, of like import, was sent by Wigg, but subsequently he asked liberty to withdraw it.

When these charges had been made, the committee, through one of its members and clerk, made a careful inspection of the original papers in the Third Auditor's office, and found both the "brief" and the account hereinbefore quoted to be in Wigg's handwriting, and that the brief was signed by him. On learning this, and a copy of the account being shown to him, Wigg confessed that the papers were his own work, but protested "that he had forgotten all about those papers." He then asked the committee not to go back of the reports of the 32d Congress, and if they did go back to the original papers, not to report the case to the House.

The committee preferred not to concur in these requests, and ordered a full report of the facts in the case to be made to the House. The facts developed in the investigation are quite extraordinary, and in compliance with the order of the committee, further statements are placed in the appendix, and are made a part of this report.

APPENDIX.

Wigg's original claim was presented to both houses May 10, 1852. It was for losses sustained at the hands of the British, in 1780, by Major William Hazzard Wigg, the grandfather of the claimant. Major Wigg was a gallant officer. He was captured by the British, and selected as one of the forty patriots who were made hostages of war at the time of the execution of Colonel Isaac Hayne, May 12, 1780. While a hostage of war his plantations were destroyed by the enemy. The present claimant presented papers as proofs of the claim, and among them this

"*Statement of loss.*

"88 prime negroes, worth $390 per capita	$34,320 00
" 8 inferior negroes, worth $195 "	1,560 00
" 6 horses, worth $100 "	600 00
"15 head of cattle, worth $13 "	195 00
"50 head of sheep, worth $3 "	150 00
"30 hogs, worth $5 "	150 00
" 1 four oared canoe boat, worth $100	100 00
"£25 carpenter's and cooper's tools	122 00
"Crop destroyed by removal of negroes at harvest season	4,000 00
	41,197 00
"Seventy-one years' interest at six per cent	175,381 00
"Total amount of loss	216,578 00
"Four hundred sections of public land asked in full of losses and services of Major Wigg during the war of the revolution, which, at 80 cents per acre, will be worth	204,800 00
"Gain to government	11,778 00"

The committee of the House recommended payment for all the losses as above stated, *except for crops destroyed by removal of negroes at harvest season*, to wit, $37,197. In addition, interest was recommended, and a bill was reported accordingly. The committee of the Senate agreed to the same, except that the ninety-six negroes were valued at $300, and reported a bill to that effect, giving interest from November 14, 1782.

In respect to the claim of $4,000, for crops, *Wigg now admits that he gave it up*, by the advice of Senator Butler, on the ground that "it would prejudice the whole claim." He waived the proposition for land also. When the bill was considered in the Senate, (January 14, 1853,) Senator Bayard, of Delaware, objected to allowing interest. Senator Butler, of South Carolina, conceded that there was no ground for any part of this claim, unless the peculiar circumstances of the case exempted it from the general class of such claims. On that ground he supported the bill, but conceded that interest should be allowed only from the time the claim was presented. January 21, 1853, it was agreed to increase the principal to the amount named by the House committee, to wit: $37,197, and to allow interest from 4th March, 1851. In support of the bill, Senator Butler said:

"The gentleman who is interested in this bill *has given up a great deal* that the committee of the Senate thought he was entitled to ask."

This evidently referred to the $4,000 item for crops, and to the interest. We repeat, Wigg has *admitted* to one of the committee that the item for crops was given up.

Thus amended, the bill passed the Senate; and it was passed in concurrence by the House, on the previous question and without debate.—(See Congressional Globe, 1852-53.) The act is as follows:

"ACT FOR THE RELIEF OF WILLIAM HAZZARD WIGG.

"[*No.* 101.]—*An act authorizing the adjustment and payment of the claims of William Hazzard Wigg, deceased, for losses sustained by him during the war of the revolution.*

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the proper accounting officers, under the direction of the Secretary of the Treasury, adjust and settle the claims of Major William Hazzard Wigg, deceased, late of the State of South Carolina, for losses sustained by him, the said Wigg, while retained as a hostage by the British officers during the war of the revolution.

"SEC. 2. *And be it further enacted*, That the said accounting officers, in the adjustment of the said losses, shall, and they are hereby, directed to allow the said Wigg the sum of thirty-seven thousand one hundred and ninety-seven dollars, with legal interest from the fourth day of March, eighteen hundred and fifty-one, until the day of stating the account of said losses.

"SEC. 3. *And be it further enacted*, That the Secretary of the Treas-

ury be, and he is hereby, authorized to pay to William Hazzard Wigg, the grandson of the said William Hazzard Wigg, deceased, the amount that shall be ascertained to be due on account of the losses, including the interest, out of any money in the treasury not otherwise appropriated.

"Approved March 3, 1853."

On the presentation of this act at the Treasury Department, 9th March, 1853, the Third Auditor proceeded to "adjust and settle the claims" provided for in the first section. He allowed the principal fixed in section 2, to wit:..... $37,197 00
And interest at 6 per cent. from 4th March, 1851, to 1st March, 1853, as per second section..... 4,494 21

41,691 21

And in accordance with the appropriation contained in section 3, the foregoing sum was paid to the claimant.

Wigg had *given up*, according to his own admission, the claim for crops, because it would prejudice the whole claim; the Senate had, on full consideration, settled the interest and principal; and by the declaration of Senator Butler it is clear that *Wigg agreed to all this.* On these conditions, by "*giving up a great deal,*" he procured his act. That act covered every dollar of his original claim, except what he had "given up;" and the treasury paid him every dollar provided for in the act. It would seem that here should be an end to the claim; but Wigg himself was of a widely different opinion. From this moment he starts a variety of claims, *based upon the act thus obtained.*

The claimant at the Treasury Department.

On page 15 of a pamphlet purporting to relate to these claims, and a part of which was put into the case before the committee by Wigg, is this

NOTE.

"Upon payment of the sum provided for in the 2d section of the foregoing act, in March, 1853, the claimant receipted for "*part payment,*" and gave notice of his further demand for the value of the *crops* lost by his grandfather, the amount of which, being then uncertain, he would take steps to discover as soon as possible, desiring, in the meantime, that no action should be taken in the case. Pursuant to this notice he proceeded immediately to South Carolina, and finding the evidence anticipated, (chiefly in the comptroller general's office of the State,) he returned to Washington in the following October, and upon presenting himself at the treasury, in place of the final adjustment agreeable to the law, which he asked, he was met with the following decision of the honorable Treasurer; whereupon he caused his petition to the Court of Claims, herewith printed, to be duly filed by his attorney."

The decision of Secretary Guthrie, thus alluded to, is dated April 29, 1853; and it is "that Wigg's account has been adjusted, settled, and paid in strict accordance with my [the Secretary's] view of the act; the act has already fulfilled its object, and the Secretary of the Treasury and accounting officers have no power or authority to re-adjust and resettle the claim for losses." It seems, moreover, that "this was in accordance with the construction given to the act by Mr. Colcock, one of the South Carolina members, who, on hearing that an attempt was to be made by Wigg to get more, voluntarily wrote to the Secretary to say that this was not the intention of those by whose influence Congress had been induced to pass the law."—(See Doc. C, annexed.)

The claimant in the Court of Claims.

This decision of Secretary Guthrie comes to Wigg's knowledge in October, 1853, and we do not find him again until July 16, 1855, when he files a petition in the Court of Claims to this effect:

1. Averring that the officers of the treasury have refused to pay anything beyond the sum named in the 2d section of the act of March 3, 1853, and have declined to adjust and settle his claim "according to what your petitioner [Wigg] believes to be the true intent and meaning of said act."

2. Averring a clerical error of $1,560 in the report of the House Committee on Revolutionary Pensions, No. 176, 1st session 32d Congress. [The claim disposed of in this report.]

3. Claiming "about six thousand dollars" for crops lost. [Originally this item was $4,000, and it was "given up."]

4. Claiming interest on the whole amount lost, "from the time of the loss," and averring that the House so *passed* the bill and sent it to the Senate. [We do not find that the House bill ever passed; on the contrary, the Senate *refused* the interest, except from the date of the claim, March 4, 1851, and the House concurred in the Senate bill.]

This petition was argued and submitted to the court, on the question of law, December 20, 1855; and on the 4th of January, 1856, Judge Gilchrist delivered the opinion of the court. The court concurred in Wigg's construction of the act, and directed testimony to be taken, "to determine whether any further sum should be allowed to the claimant than that specified in the 2d section of the act."—(Document A, annexed.)

Wigg was thus put upon the proof of his claim by the court; and next we find him varying the claim itself by an amended petition, which was filed in court October 17, 1857.—(Document B, annexed.) *He dropped his claim for clerical error;* perhaps it could not be entertained under the act: more probably it could not have been proven, had the solicitor of the United States produced Wigg's original statement of the claim. But a still more remarkable variation was in the claim for *crops lost.* In the original statement of loss of crops, Wigg put the amount at $4,000 in the whole; after he had returned "with the evidence anticipated," in October, 1853, (see "note" before quoted,) he set up the amount, in the first petition to the court,

at "about $6,000" in the whole; but in the amended petition he says he believes he can establish the "fact, that in addition to the losses estimated in said report [House committee, 32d Congress,] and allowed in the act [of 1853,] his said grandfather lost his crops *for a series of years*, to the *annual average amount of about twenty-two thousand two hundred and fifty dollars.*" The case was partly argued on the facts March 18, 1858, as appears from a note from the assistant clerk of the court, who adds: "Since then the claimant's counsel have never resumed the case." It will be seen hereafter that he means that the argument was abandoned. Inasmuch as the grounds of Wigg's claim have been given in his amended petition, we add the brief of the solicitor of the United States.—(Document C, annexed.)

The claimant in Congress again.

Having abandoned his claim for clerical error in the Court of Claims by his amended petition of October 17, 1857, Wigg presented that claim to Congress June 10, 1858. Senator Hammond stated that a clerical error had occurred, and by unanimous consent, without reference or examination, a resolution for the relief of Wigg was passed by the Senate. After this resolution reached the House, December 7, 1858, Mr. Keitt stated that there had been a clerical error, he believed in the amount of interest, and asked the concurrence of the House in the Senate resolution; but on motion of Mr. Giddings, the resolution was referred to the Committee of Claims. January 4, 1859, the committee reported that in House report of Committee on Revolutionary Pensions, No. 176, (printed copy,) they had found a clerical error amounting to $1,560; and on this report, January 31, 1859, the House concurred in the Senate resolution by a vote of 92 to 57. Unquestionably the gentlemen from South Carolina and the Committee of Claims acted upon an averment or assurance of error by Wigg, apparently sustained by the printed reports in the case. Wigg distinctly alleged error to the court; we presume he did to the gentlemen named. Had such an assurance been made to this committee it is quite probable the claim would not have been rejected, unless it had been upon grounds entirely different from those that have controlled this decision. Fortunately this committee had commenced the investigation and discovered the nakedness of the claim before Wigg appeared. Thus much in justice to those gentlemen who favored the resolution of 1859.

The resolution was approved February 2, 1859, and directed the Secretary of the Treasury "to examine and readjust the accounts of William Hazzard Wigg, stated under authority of the act of Congress for his relief," (1853,) "and ascertain the alleged clerical error," &c.—(Document D, annexed.)

Upon the presentation of this resolution, the Treasury Department again rejected Wigg. To use his own words: "The Secretary declined paying the above resolution, on the ground that it gave to him no authority to go back to the report of the committee to ascertain the existence of the alleged error, and in this opinion he was sustained by the Attorney General."

The claimant in the Court of Claims once more.

While Congress is acting on this claim for error, set up on the 10th of June, 1858, and provided for in the resolution of February 2, 1859, (passed January 31,) Wigg has an eye upon his claim for crops and interest, which was languishing in the Court of Claims. December 13, 1858, Wigg asked the court *to dismiss his case* for want of jurisdiction, but the court refused to do so.—(Document E, annexed.)

The claimant appeals to Congress against the court.

The court having refused the motion to dismiss the case, on the 4th of January, 1859, (the very day on which the House committee reported in favor of his resolution in respect to the clerical error,) Wigg sent a memorial to the Senate, asking an order for the withdrawal of his papers from the Court of Claims. It was referred, but not reported at that session. February 9, 1860, he procured from the Senate an order for the withdrawal of his claim for crops and interest from the court. February 13, 1860, he presented his order to the court and moved a dismissal of the case, and the claim for crops and interest is now pending in the Senate. February 16, 1860, he presented his claim for clerical error to the House and asked an absolute appropriation, without the power of scrutiny in the Treasury Department. The Committee of Claims of the House found no claim on the ground of error.

Such is the history of the case as developed in the committee; and it is deemed worthy of record, as an example of the ingenuity with which questionable claims are sometimes pressed upon Congress, the Treasury Department, and the Court of Claims, and as a warning to all concerned.

A.

COURT OF CLAIMS.

WILLIAM H. WIGG *vs.* THE UNITED STATES.

[Petition filed July 16, 1855.]

Opinion of Chief Justice GILCHRIST:

The following opinion in the case of William H. Wigg *vs.* The United States was delivered by Chief Justice Gilchrist on Friday, January 4, 1856.

To the honorable Court of Claims of the United States, sitting in Washington, D. C.

Your petitioner, William Hazzard Wigg, of the State of South Carolina, respectfully represents, that by the act of March 3, 1853, being chapter 138 of the acts of the second session of the thirty-second Con-

gress, it was enacted "that the proper accounting officers, under the direction of the Secretary of the Treasury, adjust and settle the claims of Major William Hazzard Wigg, deceased, for losses sustained by him while retained as a hostage by the British officers during the war of the revolution." The second section of said act also directed the said officers to allow the sum of $37,197, with legal interest from the 4th of March, 1851; and the third and last section thereof authorized the Secretary of the Treasury to pay to your petitioner, the grandson of said deceased, "the amount that should be ascertained to be due on account of said losses, including the interest."

Your petitioner further represents that in construing this act the officers of the treasury have refused to pay anything beyond the sum named in the second section of said act, with the interest there allowed, declining "to adjust and settle" the said claims, or to ascertain "the amount due on account of said losses," according to what your petitioner believes to be the true intent and meaning of said act.

Your petitioner alleges that, in his belief, the sum allowed is wholly inadequate as an estimate of the losses of his said grandfather, without taking any account of the interest. By reference to the report made to the House of Representatives by the Committee on Revolutionary Pensions, (Rep. No. 176, 1st session 32d Congress,) it will be seen that the estimate made by that committee was the exact amount inserted in the bill reported by them, which afterwards became a law. But in the very first item of that estimate *there is a clerical error* of no less than $1,560; the value of the ninety-six slaves, at $390 each, being $37,440 instead of $35,880, the amount estimated.

Besides this evident error of calculation, your petitioner has since discovered testimony not discovered at the time of his application to Congress, by which he believes he can establish the fact that in addition to the losses estimated in said report and allowed in the act, his said grandfather also lost his crops, to the amount of about six thousand dollars. As this loss was produced by the same causes, and occurred at the same time, as that already paid for, and was, indeed, a part of it, your petitioner insists that it ought to have been allowed and paid by the accounting officers of the treasury.

Your petitioner further insists, that as the claim of his grandfather is based upon the established principles of the public law as laid down by all the great writers on that subject, he is entitled to interest from the time of the loss, as ably and justly argued by the aforesaid committee of the House of Representatives, in the report already referred to. The House of Representatives itself seemed to concur in this view of the law, inasmuch as it passed the bill of the committee, and sent it to the Senate without alteration.

The Committee on Revolutionary Claims in the Senate, by its report No. 398, 1st sess. 32d Congress, also adopted the same view on the subject of interest. And it is now respectfully submitted to the court that the law of the case is as it was stated by the respective committees of the two houses of Congress in their reports aforesaid, and ought to be so declared by this tribunal, in order to correct the erroneous decision made at the treasury, as already stated.

In consideration of the premises, your petitioner prays that an ac-

count of all the losses sustained by his grandfather, while a hostage as aforesaid, may be fairly taken and stated, and that the same, with all the interest properly and legally due thereon, may be allowed and reported to Congress for payment.

W. H. WIGG.

BROWN, STANTON, and WALKER, *Attorneys.*

The question presented by this petition is whether such a case is therein stated as would authorize the court to order the taking of testimony?

The answer to the question depends upon the construction to be given to the act of March 3, 1853, ch. 138, 2d session 32d Congress. This act consists of three sections. The first section provides "that the proper accounting officers, under the direction of the Secretary of the Treasury, adjust and settle the claims of Major William Hazzard Wigg, deceased, late of the State of South Carolina, for losses sustained by him, the said Wigg, while retained as a hostage by the British officers during the war of the revolution."

The second section enacts "that the said accounting officers, in the adjustment of said losses, shall, and they hereby are, directed to allow the said Wigg the sum of thirty-seven thousand one hundred and ninety-seven dollars, with legal interest from the 4th day of March, 1851, until the day of stating the account of said losses."

The third section enacts "that the Secretary of the Treasury be, and he is hereby, authorized to pay to William Hazzard Wigg, the grandson of the said William Hazzard Wigg, deceased, the amount that shall be ascertained to be due on account of said losses, including the interest, out of any money in the treasury not otherwise appropriated."

The construction given to the different sections of this act by the solicitor is, that the first section was intended merely to state the grounds on which the allowance was to be made, that the second section was meant to declare and limit the amount to be paid, and that the third section intended only to provide that the sum specified should be paid to the claimant, the grandson of the deceased Major Wigg. He contends that the whole duty of the Secretary was performed by paying to the claimant the sum of $37,197, with the interest thereon.

The claimant alleges that "the officers of the treasury have refused to pay anything beyond the sum named in the second section of said act, with the interest there allowed, declining to 'adjust and settle' the said claims, or to ascertain 'the amount due on account of said losses,' according to what the petitioner believes to be the true intent and meaning of said act."

It is unnecessary for us to determine or to investigate any other question than that which arises upon the face of the act itself. If the three sections of the act had had no other purpose than such as the solicitor contends is indicated by them, it would have been the easier and more obvious mode to provide by one section only that the sum of $37,197 should be paid to William Hazzard Wigg for losses sustained by his grandfather, Major William Hazzard Wigg, while detained as a hostage during the war of the revolution. There is no mysterious art to be applied to the exposition of statutes. It is to be

presumed that the legislature intend that words used in a statute shall have their natural effect. Their meaning is to be ascertained by the language they have used, and it is not to be supposed that they have used words without intending to convey any idea. Their whole purpose, as expressed in the act, is to be carried into effect, if possible, and no clause is to be rejected, unless it is necessary in order to accomplish the object intended by the legislature.

Tried by these rules, the whole meaning of the act cannot be said to be confined to the second section, as it now stands, or as it would be if it were so expressed as to accomplish only the object supposed by the solicitor. His construction, acute and ingenious as it is, does not seem to us to be the more obvious one. When the first section expressly provides that the accounting officers of the treasury shall "adjust and settle" the claims of Major Wigg, we know of no rule of construction that would authorize us to say that these words had no meaning, and that Congress did not intend that the claims should be adjusted and settled by the accounting officers. If we can say that these words had no meaning, and that Congress did not intend to convey the idea which the words express, what express provision of any act of Congress may we not reject, and where could the line be drawn? The second section of the act provides that "the said accounting officers, in the adjustment of the said losses," shall allow the said Wigg the sum specified. It is not, therefore, a mere provision for the payment of this sum. It implies that the first section requires something to be done, because the sum of $37,197 is to be allowed "in the adjustment of said losses," which by the first section were to be adjusted and settled. Further, unless this adjustment were to be made, there would be no means of determining the amount of the interest, for that is to be cast from the 4th day of March, 1851, "until the day of stating the account of said losses;" and this is an additional reason why the language of the first section should receive the construction we have intimated. This section intends that when the losses are adjusted, in the adjustment the sum of $37,197 shall be allowed; but it does not exclude losses exceeding that sum, if such be satisfactorily proved.

As to the third section, in addition to pointing out the person who is to receive the money, it provides that the sum to be paid him shall be "the amount that shall be ascertained to be due on account of said losses." It is evident that Congress did not intend that merely the sum of $37,197 should be paid him, because, if such had been their intention, it cannot be conceived that they would have avoided the obvious and simple mode of saying so in terms, and would have adopted other language. Instead of specifying the sum, it is provided that "the amount that shall be ascertained to be due" shall be paid him. We are not aware of any authority that would permit us to construe these words as synonymous with the sum of $37,197, or to reject them as senseless and without meaning. We think that the act requires that the claims of Major Wigg should be adjusted and settled at the treasury; that, in the adjustment, the sum of $37,197 should be allowed; that it is only in this mode that the interest can be computed; that, when the amount is ascertained to be due, it shall be paid to the

claimant; and that it is only upon this construction that the whole object of the act can be accomplished.

This case does not raise the question whether, when Congress has conferred upon an individual, or a board, or a department, the power to examine and decide a matter, and the matter has been decided, such decision is or is not final? Here the Treasury Department considered that they had no power to adjust and settle the claims, and declined to do so. If the department had acted on the matter, the question as to the conclusiveness of the decision might have been raised, but as no action was had, we do not intend to express any opinion on the question alluded to. It is alleged in the petition that, in construing this act, the officers of the treasury have refused to pay anything beyond the sum named in the second section of said act, with the interest there allowed, declining to "adjust and settle" the said claims, or to "ascertain the amount due on account of said losses," according to what the petitioner believes to be the true intent and meaning of the act. As our conclusions are different from those arrived at by the officers of the treasury, and as we are of the opinion that the claims for losses should be adjusted and settled, we shall direct testimony to be taken, and, when that is submitted to us, we shall be able to determine whether any further sum should be allowed to the claimant than that specified in the second section of the act.

B.

To the honorable Court of Claims of the United States, sitting in Washington, D. C.

Your petitioner, William Hazzard Wigg, of the State of South Carolina, respectfully represents, that by the act of March 3, 1853, being chapter 138 of the acts of the second session of the 32d Congress, it was enacted "that the proper accounting officers, under the direction of the Secretary of the Treasury, adjust and settle the claims of Major William Hazzard Wigg, deceased, for losses sustained by him while retained as a hostage by the British officers during the war of the revolution." The 2d section of said act also directed the said officers to allow the then ascertained sum of $37,197, with legal interest from the 4th of March, 1851; and the 3d and last section thereof authorized the Secretary of the Treasury to pay to your petitioner, the grandson of said deceased, "the amount that should be *ascertained* to be due on account of said losses, including the interest."

Your petitioner further represents, that, in construing this act, the officers of the treasury have refused to pay anything beyond the sum named in the 2d section of said act, (which was only the amount then *ascertained* to be due,) with the interest there allowed, declining "to adjust and settle" the said claims, or to ascertain "the amount due on account of said losses," according to what your petitioner believes to be the true intent and meaning of said act.

Your petitioner has also, since the passage of the law by Congress,

procured testimony that was not previously accessible, by which he believes he can establish the fact, that in addition to the losses estimated in said report, and allowed in the act, his said grandfather likewise lost his crops for a series of years, to the annual average amount of about twenty-two thousand two hundred and fifty dollars. As this loss was produced by the same causes as that already paid for, and was, indeed, a part of it, your petitioner insists that it ought to have been allowed and paid by the accounting officers of the treasury.

Your petitioner further insists, that as the claim of his grandfather is based upon the established principles of the public law as laid down by all the great writers on that subject, he is entitled to interest from the time of the loss, as ably and justly argued by the aforesaid committee of the Senate, in the report already referred to, and the Senate itself seemed to concur in this view of the law, inasmuch as it passed the bill of the committee and sent it to the House of Representatives without alteration.* By reference to the report made to the Senate by the Committee on Revolutionary Claims, (Senate No. 398, 1st sess. 32d Congress,) it will be seen that the estimate made by that committee was the exact amount inserted in the bill reported by them, that afterwards became a law, which is indicative of the sense of that body upon the general merit of the claim, and the Committee on Revolutionary Claims in the House of Representatives, by its report, (No. 176, 1st sess. 32d Congress,) also adopted the same view on the subject of interest. And it is now respectfully submitted to the court, that the law of the case is as it was stated by the respective committees of the two Houses of Congress in their reports aforesaid, and ought to be so declared by this tribunal, in order to correct the erroneous decision made at the treasury as already stated.

Your petitioner finally alleges that, in his belief, the sum allowed is wholly inadequate as compensation for the losses of his said grandfather, and in consideration of the premises your petitioner prays that an account of all the losses sustained by his grandfather, arising from his condition of hostageship as aforesaid, may be fairly taken and stated, and that the same, with all the interest properly and legally due thereon, may be allowed and reported to Congress for payment.

WILLIAM HAZZARD WIGG,
Of South Carolina.

Hon. REVERDY JOHNSON, *Attorney.*

C.

IN THE COURT OF CLAIMS.

ON THE PETITION OF WILLIAM HAZZARD WIGG.

Brief of the Solicitor of the United States.

This claim is founded on an alleged misinterpretation of the act of Congress of 3d March, 1853, (10 Stat., p. 768,) for the relief of the claimant, whereby the claimant was held to be entitled to only the sum of $37,197, and interest from 4th March, 1851, till paid; whereas, it is contended he was entitled to recover not only that sum,

*An error.

but payment for any other *losses* he should show to have been incurred by his grandfather whilst a hostage. The Secretary of the Treasury, in a decision dated 29th April, 1853, construed the words of the act which imposed upon the accounting officers the duty of "adjusting" and "settling" the account, and paying the amount that shall be *ascertained* to be due to the claimant, to mean only that those officers should compute the interest on the sum mentioned in the second section of the act, and refused to consider any testimony for the ascertainment of any other losses than those considered by Congress itself; *and this was in accordance with the construction given to the act by Mr. Colcock, one of the South Carolina members, who, on hearing that an attempt was to be made by Wigg to get more, voluntarily wrote to the Secretary to say that this was not the intention of those by whose influence Congress had been induced to pass the law.* This court, however, on a hearing of this case, had, for the purpose of considering what construction should be given to this act, decided that the language of the act was such as to admit of a claim being preferred under it for other losses than those considered by the committee; and the petitioner, in an amended petition, alleges that "since the passage of the law by Congress he has procured testimony that was not previously accessible, by which he believes he can establish the fact that, in addition to the losses estimated in said report, and allowed in the act, his said grandfather likewise lost his crops for a series of years to the annual average of about $22,250." He claims this and interest from the time of the loss.

No such evidence as the petitioner here alleges that he had procured is offered. Some depositions have been taken, but the witnesses depose to no material fact. They do not profess even to have heard of any other losses than those considered by the committees of both houses of Congress by which the act of 1853 was passed, and which were included in their estimate.

Nor is it pretended in the argument of the counsel that any "testimony that was not previously accessible to establish the fact that, in addition to the losses estimated in said report, and allowed in the act, his grandfather likewise lost his crops for a series of years," &c., has been procured; but, on the contrary, it is merely attempted to show that it is a necessary inference from the facts assumed to have been established before these committees, that Major Wigg must have lost his crops for a series of years. The reasoning is this: as it appears that Congress assumed that Major Wigg lost ninety-six negroes from his plantations, on Okatee river, in 1781, it follows that he lost the crops which these negroes would have made if he had not lost them; and the new testimony taken does not go to the fact that any such losses were actually incurred, but merely to estimate the probable value of the labor of *prime* negroes on the rice lands on the Okatee, in the last century. Some of the witnesses estimate the value of such services at $250 a hand, but others again, as Mr. Barnwell, the best informed, estimates it at but $40 per annum. Then it is argued from the fact that as of a certain lot of 614 confiscated negroes only 44 were not *prime*, a great part of the negroes of those days were *prime*, and this is accounted for by the existence of the slave trade in those old days.

The dealers would not import any but a *prime*, merchantable article, and, therefore, in a given number of slaves, there would be a much greater proportion than in our day of working people.

It is only in this way the claimant shows any additional losses. He does not state the extent of these additional losses in the petition. It is there only said that there was annual average loss of $22,250 for a series of years, and I think it not unlikely that if the loss was $22,250 in 1781 or in 1782, it was not less in any of the 79 subsequent years, nor do I see any reason why his heirs should be denied compensation for any of the recent years if the earlier years are to be paid for.

It is manifest at a glance, indeed, that this is but an effort to get the profits which would have been earned by the negroes in lieu of the interest on the value of the negroes during the years intervening between 1781 and 1851, which Congress expressly disallowed in the act of 1853, by restricting the payment of interest to the time subsequent to the 4th March, 1851.

A claim for interest is so plainly in violation of the intent of the law that the claimant himself, in a letter to Mr. Cruger, found among the papers, expressly disclaims making such a claim. Referring to Mr. Colcock's letter, he says it was approved by him, but that it was written under the idea that the law admitted of a claim for interest from 1781, which he had no idea of doing. But he does, in fact, not only claim interest, but interest at a most exorbitant rate. Interest is but compensation for the want of the use of the articles or the value of the articles lost. Against a wrongdoer a plaintiff is allowed to recover specific articles, when they may be reached, and compensation for the use of them. As, for example, when a negro is recovered by action of replevin, the value of his services may also be recovered. But where the value of an article only is claimed and recovered, it is treated as if a sale had been made and the value of the article only and interest thereon is adjudged. This is so in suits between private litigants, and it is so also with respect to claims against the government, when compensation is made for the loss of the use of a thing as well as of the thing itself. This is illustrated by the reclamations against Great Britain for negroes, where, by the decision of the Emperor of Russia, it was determined that Great Britain should pay not only the loss, but make compensation for the want of the use of it since. That compensation was to be made by the payment of interest. Certainly that would be the utmost that could be expected of the United States in any case; but in this case interest was distinctly refused by Congress except from the date when the claim was made. It was no fault of the government that the claim was not presented sooner, and it seems to me that no complaint can be made of the manner in which the claim was acted on by Congress under all the circumstances.

In short, the court construed the act of 1853 to admit of a claim for *other distinct and independent losses* besides those which were considered and compensated by that act. But the claim here presented does not fall within that category. It is merely a claim for losses which might have been but were not necessarily consequential upon that which has been compensated. The letter of the law admits only of those which

are proved to have been actually suffered whilst Major Wigg was detained as a hostage, and there is no proof that he lost crops, or that he had them to lose. Nor does it necessarily follow that he suffered such losses, if it be assumed, as proved in this case, that the negroes were taken by the British; because their places may have been supplied, or they might have been lost if the British had not taken them. The principle of compensation for lost profits or interest must therefore be resorted to, and the act by limiting the compensation on that account to the time since the 4th March, 1851, is decisive against any further allowance on that score.

M. BLAIR.

D.

Resolved by the Senate and House of Representatives of the United States in Congress assembled, That the Secretary of the Treasury be, and is hereby, directed to examine and readjust the accounts of William Hazzard Wigg, stated under authority of the act of Congress for his relief, approved on the third of March, eighteen hundred and fifty-three, and ascertain the alleged clerical error, whereby the sum of fifteen hundred and sixty dollars is supposed to have been withheld; and to pay the same to him out of any money in the treasury not otherwise appropriated, according to the true intent and meaning of that act.

Approved February 2, 1859.

E.

IN THE COURT OF CLAIMS.

WILLIAM HAZZARD WIGG *vs.* THE UNITED STATES.

December 13, 1858.

SCARBURGH, J.

On the 4th day of January, A. D. 1856, an elaborate opinion on the petition in this case was delivered for the court by the late presiding judge, and an order was made directing testimony to be taken. On the 18th of March, 1858, this case came on to be heard upon its merits. The argument for the petitioner was opened by his counsel; the solicitor answered, but before the reply on the part of the petitioner was closed it was suspended, and has not since been renewed. A motion is now made by the petitioner that this court shall decide that his case is not within its jurisdiction, in order that he may take it to Congress.

The petitioner's case is based upon the act of Congress approved March 3, A. D. 1853, (10 Stat. at L., p. 768, ch. 138,) and this court is expressly required by law to "hear and determine all claims founded upon any law of Congress."—(10 Stat. at L., p. 612, ch. 122.)

The petitioner's motion is overruled.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 472.

SARAH POST—WIDOW OF WM. F. PALMER.

APRIL 20, 1860.—Ordered to be printed.

Mr. FOSTER, from the Committee on Invalid Pensions made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Sarah Post, widow of William F. Palmer, asking a pension, report:

That the petitioner, Sarah Post, asks a pension solely on her own statement, unsupported by a line of evidence, even the fact that her husband, William F. Palmer, was ever in the naval service. The petitioner admits that she is unable to prove any of the facts set forth in her petition except her marriage. Your committee do not think they would be warranted in recommending the grant of a pension to the petitioner, and ask to be discharged from the further consideration of the case.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 473.

ABRAHAM RICHARDS.

APRIL 20, 1860.—Ordered to be printed.

Mr. FOSTER, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom were referred the petition and papers of Abraham Richards, asking a pension, report:

That your committee have examined the voluminous papers with care, and can find no evidence in all of them that the petitioner has acquired either a wound or a disease which has become chronic or that incapacitates him for life.

It appears the petitioner enlisted in the army during the war with Great Britain, in 1812. It appears he became sick and was sent to the hospital, and subsequently returned to the army and was discharged at the end of the war; but no note or proof of disability at the time. He appears now to be sick, but may not age cause this? Your committee therefore ask to be discharged from the further consideration of the subject.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 474.

ABEL M. BRYANT.

APRIL 20, 1860.—Ordered to be printed.

Mr. FOSTER, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Abel M. Bryant, asking a pension, report:

That the petitioner has presented his petition only, not averred by affidavit nor supported by a single witness.

Your committee therefore asked to be discharged from the consideration of the same.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 475.

JOHN S. LIVERMORE.

APRIL 20, 1860.—Ordered to be printed.

Mr. FOSTER, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition and papers of John S. Livermore, asking that he be paid arrears of pension, report:

That the petitioner, it appears, received a pension as an invalid soldier in the war of 1812, commencing in the year 1852, not having sooner applied for it. He now asks that he be paid the arrears since the war.

It would be contrary to the established usage and law to comply with the petitioner's prayer, and your committee therefore ask to be discharged from the further consideration of the subject.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 476.

ASA PRATT.

APRIL 20, 1860.—Ordered to be printed.

Mr. FOSTER, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Asa Pratt, asking to be paid back pension, report:

That the petitioner, Asa Pratt, is now enjoying a full pension as an invalid soldier of the war of 1812. He now comes and asks that he be paid a pension from the date of his disability. The custom of the Pension bureau, and long sanctioned as law, precludes the payment of arrears of pensions prior to the time of application for one. To set aside this practice would open a door to admit numerous others making the same demand. Your committee think this would be wrong, and therefore ask to be discharged from the further consideration of this subject.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT, No. 477.

WILLIAM PATTERSON.

APRIL 20, 1860.—Ordered to be printed.

Mr. FOSTER, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of William Patterson, asking back pension, make the following report:

That the petitioner, William Patterson, is now a pensioner on the rolls since 1839, but now asks that he be paid from the year 1821 arrears that he ought to have received.

The rule of granting pensions to army invalids, from the date of the perfecting of the proof, has from long practice ripened into a law. Your committee are therefore precluded from granting the prayer of the petitioner, and therefore ask to be discharged from the further consideration of this subject.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 478.

MARGARET DOIG—WIDOW OF EZRA KING.

APRIL 20, 1860.—Ordered to be printed.

Mr. FOSTER, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Margaret Doig, widow of Ezra King, late a soldier in the war of 1812, *report:*

That it appears from the petition that Ezra King was a third lieutenant in the army during the late war with Great Britain. It appears that she now enjoys a pension, commencing as early as 1817, on account of the services and death of her said husband. She now comes before Congress to have this pension increased.

Your committee can see no good reason why the prayer of the petitioner should be granted, and they therefore ask to be discharged from the further consideration of the subject.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 479.

HARRIET F. FISHER, ADMINISTRATRIX OF M. W. FISHER AND RICHARD M. BOUTON.

[To accompany Bill H. R. No. 684.]

MAY 3, 1860.

Mr. BOTELER, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of Richard M. Bouton and Harriet F. Fisher, administratrix of M. W. Fisher, deceased, having had the same under consideration, submit the following report:

The great ingenuity and mechanical skill exhibited in the invention of the celebrated cap machines, for which the petitioners claim compensation, have been long admitted, and, indeed, have been the subject of universal admiration. The right of the parties to claim compensation for the use of these inventions by the government has not been seriously contested; on the contrary, it has been fully admitted in several reports made to the two houses of Congress, and, finally, by the payment of five thousand dollars under the law of the last Congress.

The amount of compensation to which the parties are justly entitled, has been the only subject of serious contest. In their application to the Secretary of the Navy, of date the 18th May, 1853, they claimed the sum of $72,500, that being the amount actually saved to the government during the Mexican war, as plainly shown by the facts.

In report No. 58, made by this committee to the House of Representatives on the 8th of February, 1849, the sum of $20,000 was recommended as a fair compensation to only one of the parties.

In the same Congress, the Military Committee of the Senate, through Mr. Rusk, reported the like sum for only one of the petitioners.—(Senate report No. 266, 2d sess. 30th Congress.)

These two committees entered into a calculation to show the actual value of the machine to the government; and they have established, beyond a doubt, that the sum of $20,000 to each of the parties, as reported by them, was much less than the saving effected by the invention up to that time. The committee do not deem it necessary to repeat these calculations, as they are already published in the documents, and are entirely satisfactory.

It further appears that these reports based an estimate of the claims of the petitioners merely upon its use in the military service of the country. Independent of this, they are now in use for the navy, and have, according to the certificate of naval officers, been of incalculable value. The claim of the memorialists on Congress is, therefore, so much the stronger.

It thus appears that the petitioners, by their inventions, have rendered service to the government which, at a low estimate, is well worth twenty thousand dollars each. The last Congress, without consulting the parties, appropriated $5,000 each, and directed that amount to be paid for the past and future use of their machines. The inventors are not satisfied to sell their property at one-fourth of its value; and this committee are of opinion that the government ought not to take it without payment of a fair equivalent. They therefore report an additional appropriation of $10,000 to each of the petitioners, that being the amount estimated by the committees of the House and Senate, in 1849, as justly due to them. But it is deemed proper to require, as a condition, that the parties relinquish any further demand against the government on account of the use of their patent-rights before the sum mentioned shall be paid.

All of which is respectfully submitted.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 480.

JOHN WHITE—CHILDREN OF.

MAY 4, 1860.—Laid upon the table, and ordered to be printed.

Mr. DELANO, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of the surviving children of John White, deceased, report:

That inasmuch as it appears that John White, the soldier in virtue of whose services the petitioners now make claim, died on the 7th day of July, 1838, without having himself even made application for a pension, the case is one of a large class showing no special equity in the applicants, and which, under the general rule adopted by the committee, calls for an adverse report; they therefore ask to be discharged from the further consideration of the case.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 481.

HEIRS OF STEPHEN DAMON.

MAY 4, 1860.—Laid upon the table, and ordered to be printed.

Mr. DELANO, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of the heirs of Stephen Damon, deceased, report:

That inasmuch as it appears that Stephen Damon, the soldier in virtue of whose services the petitioners now make claim, died about the year 1846, without having himself ever made application for a pension, the case is one of a large class showing no special equity in the applicants, and which, under the general rule adopted by the committee, calls for an adverse report. They therefore ask to be discharged from the further consideration of the case.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 482.

JOHN THOMAS—HEIRS OF.

MAY 4, 1860.—Laid upon the table, and ordered to be printed.

Mr. DELANO, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of the surviving children of John Thomas, late of Georgia, for arrears of pension for their father's services, report:

That the evidence in this case shows that the said John Thomas never applied in his lifetime for a pension, and there is no special equity in the matter; that it is one of a large class which come under the rule adopted unanimously by the committee, "that where no application was made in the lifetime of the soldier, the petition would not be entertained." They therefore ask to be discharged from the further consideration of the case.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 483.

SAMUEL CROSSMAN—HEIRS OF.

MAY 4, 1860.—Laid upon the table, and ordered to be printed.

Mr. DELANO, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of William Crossman and others, children of Samuel Crossman, deceased, report:

That inasmuch as it appears that Samuel Crossman, the father of the present claimants, in virtue of whose services as a soldier they make their present claim, died on the 31st day of October, 1831, without ever having himself made an application for a pension; and as it further appears that Lydia Crossman, the widow of Samuel Crossman, died on the 17th of August, 1855, without having made any application for an annuity in virtue of her husband's services, they consider the case as one of a large class showing no special equity in the applicants, and which, under the general rule adopted by the committee, calls for an adverse report. They therefore ask to be discharged from the further consideration of the case.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 484.

MRS. ELIZABETH BLISS WOLF.

[To accompany Bill H. R. No. 685.]

MAY 4, 1860.

Mr. DELANO, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of Elizabeth Bliss Wolf, asking for the pension to which she is entitled for the services of her first husband, Elijah Bliss, and of her second husband, Frederick Wolf, in the revolutionary war, report:

That the present applicant for relief is aged eighty-eight years, and it is now twelve years since she first presented her claim to the Pension office. She claimed in the twofold right, viz: under her first husband, Elijah Bliss, to whom she was married May 1, 1792, and who died in the year 1797; and, secondly, under her second husband, Frederick Wolf, whom she married in the year 1800, and who died January 20, 1837.

She offers proof of the services of both husbands as revolutionary soldiers, and we have no doubt that each did serve in such capacity, for a longer or shorter period, though for what precise period the evidence does not clearly demonstrate.

The declaration on oath of the petitioner and her children, as well as of certain aged witnesses, in nowise related to the applicant, contemporaries of Bliss, and well acquainted with him, that he was from the earliest period subsequent to this war reported to be a soldier of the revolution, and to have served in the battles of Monmouth and White Plains, we think renders abundantly probable the fact of *some service*, and that he was wounded in the service; and it is by no means improbable that he was the identical soldier bearing the same name who was returned on the rolls of the Massachusetts line as having served more than three years from that State; and it is in proof that the petitioner's husband was a native of West Springfield, Massachusetts. It has likewise been ascertained that no other soldier, nor the widow or children of any other soldier, bearing the name of Elijah Bliss have ever applied to the Pension office for the benefits of any of the pension acts, a negative proof of considerable significance. But

however these facts may be, it is not doubted that the petitioner's second husband served as a volunteer among our French allies in the war of the revolution; that he enlisted under the Duke De Lauzun, at Strasbourg, in Alsace, for the American service, and came to this country with the Duke and the Count De Rochambeau, and was in many of the revolutionary battles fought after his arrival on our shores, and the only reason assigned by the Pension office for rejecting the petitioner's claim as the widow of Wolf is, that he "was a soldier serving in the French army, and only an ally."

Now, as the evidence is clear that after the termination of the war he remained here, conducting himself worthily in all respects as a citizen, contracting marriage with the present petitioner in 1800, and living with her till his death, in 1837, though technically the above-assigned reason may be sound, we think the practical allegiance of the second husband has been attested with such fidelity, no less in the *field* than in the *family*, that it is but a just and equitable application of the pension laws to award the relief provided in the accompanying bill.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 485

REVOLUTIONARY SOLDIERS—WIDOWS AND CHILDREN OF.

[To accompany Joint Resolution No. 38.]

MAY 4, 1860.

Mr. POTTER, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom were referred the petitions of divers children of revolutionary soldiers and their widows, praying to be allowed the arrears of pensions to which their parents are alleged to have died entitled, having had the subject under consideration, beg leave to report:

That during the 1st session of the 25th Congress a joint resolution was reported by the Committee on Revolutionary Pensions, "authorizing the pensions to which certain officers and soldiers of the revolution were entitled at the time of their death, to be paid to their widows, or their children, or their legal representatives."

By the terms of that resolution it was provided that the pensions to which officers and soldiers of the revolution might have been entitled at the time of their decease under the law, *whether the claim to the same had or had not been asserted* in the lifetime of the party, might be, on satisfactory evidence establishing the right of the deceased to said pension, paid to their widows, or their children, or their *legal representatives.* Your committee, after much consideration, have concluded that the right of prosecuting the claim of the deceased officer or soldier should be restricted to those cases in which the officer or soldier had aseerted his claim to a pension during his lifetime; and that this privilege ought not to be extended to the representatives of the dead, beyond his widow or his children.

The reason for this will be obvious. There were undoubtedly many officers and soldiers of the revolution, entitled to pensions under existing laws, whose situation in life was such that they did not require this aid, who, therefore, declined to accept the bounty of the government.

In such cases there would be no propriety in allowing their descendants to come in and apply for a pension for the services of their ancestors, which the ancestors had refused. If, on the contrary, the

right or claim to a pension was asserted by the officer or soldier in his lifetime, and he did not succeed in fully establishing the claim, there is a manifest propriety in allowing the descendants to come in and perfect the proof, and receive the arrears due. But your committee are of the opinion that this right should not extend beyond the children of the deceased soldier. It would be opening the door too wide to allow remote representatives to prosecute the claims of ancestors to the bounty of the government, and to allow those to become beneficiaries who, having rendered no service, have no other foundation for their claim than the meritorious acts of their progenitors.

Accompanying the joint resolution reported by the committee of the 35th Congress, was an able report by Mr. Hickman, which your committee adopt as a part of the report in order to show the former practice of the department in reference to this subject.

"Ever since the passage of the act of May 15, 1828, 'for the relief of certain surviving officers and soldiers of the army of the revolution,' until some time during the past year, it has been the practice of the departments charged with the execution of said act, and the supplemental act of June 7, 1832, and the various acts granting pensions to widows of revolutionary soldiers, in case of the death of any person entitled to the benefit of either of said acts without having established his or her claim thereto, to permit the widow, children, or legal representatives of such officer or soldier, or the children or legal representatives of such widow, to prosecute the claim to final settlement, and to receive whatever pension was due to such beneficiary at the time of his or her death. In the case of an officer or soldier dying entitled to a pension, the arrears due at his death have been uniformly allowed to his widow, if he left any, and if no widow, then to his children. In the case of a widow dying entitled to a pension, the amount due at her decease has been uniformly allowed to her children. To this extent the practice of the executive departments has been uniform and uninterrupted for a period of nearly thirty years. Whether any other classes of heirs or representatives except widows and children are entitled to such arrears, has been a subject of some conflict of opinion, and some contrariety of practice in the executive departments. For some years past, however, it has been the practice to allow such claims to widows and children, and to them, or for their benefit, only, until some time during the last year, when the question as to their rights was submitted to the present Attorney General by the Secretary of the Interior. On the 19th of September last the Attorney General gave an opinion, to the effect that on the death of any person entitled to a pension under either of the acts above referred to before the allowance of the claim by the executive department, the right to the pension *lapses* to the government, and no arrears are recoverable, either by the widow or the children, or any other heirs or representatives. This opinion of the Attorney General has been adopted by the Secretary of the Interior as the rule of his action in such cases, and, consequently, the examination of all claims by widows and children for pensions due their husbands or parents have been suspended.

"This has caused a large number of claimants, who have thus been

denied the privilege of further prosecuting their claims before the Pension office, to apply to the present Congress for relief; and as their petitions have been referred to this committee, we have deemed it incumbent upon us to give the question of their rights, under the general laws, a careful consideration, and to report thereon.

"Your committee find that when the act of May 15, 1828, was passed, its execution was committed to the Secretary of the Treasury; that officer construed the act to vest in the beneficiary an absolute and perfect right to the pay or pension, from the third of March, 1826, which survived to his legal representatives, in case of his death before establishing his claim; and he executed the act accordingly. In so doing he conformed to a practice which had long prevailed in the execution of certain navy pension acts, similar in character, (so far as this question was concerned,) and which practice had been sanctioned by Mr. Attorney General Wirt, in an able opinion of June 9, 1825.

"On the 2d of March, 1829, Congress passed an act providing: 'That whenever any revolutionary pensioner shall die, the Secretary of War shall cause to be paid the arrears of pension due to the said pensioner at the time of his death, and all payments under this act shall be made to the widow of the deceased pensioner, or to her attorney, or if he left no widow, or she be dead, to the children of the pensioner, or to their guardian or his attorney; and if no child or children, then to the legal representatives of the deceased.'

"This act has always been construed to apply to and embrace the case of a person dying entitled to a pension, although the claim was never allowed in his lifetime; and it is by virtue of this act, (and a revisory act of June 19, 1840,) that claims of the character now under consideration have been allowed to widows in preference to children, and to children in exclusion of creditors.

"The act of June 19, 1840, on this subject, only in a slight degree modifies the provisions of the act of 1829, above referred to. It provides, that in case of the death of any male pensioner, leaving children, but no widow, or if a female pensioner, leaving children, the amount of pension due at his or her decease shall be paid to the executor or administrator, for the benefit of the children, or directly to the children themselves, or any one or each of them, without the intervention of an administrator, as they may prefer; but it does not provide, like the act of 1829, for paying the amount due, to the executor or administrator, in case neither widow nor children survived. Whatever the effect of this omission may be upon the rights of executors and administrators, where neither widow nor children survive, it is clear that the rights of widows and children, if any do survive, are the same under the act of 1840, as they were under the act of 1829.

"Said act of May 15, 1828, has been followed up by the supplemental act of June 7, 1832, embracing a more comprehensive class of revolutionary officers and soldiers, and by sundry acts granting pensions to the widows of such officers and soldiers, viz: the acts of July 4, 1836, July 7, 1838, July 29, 1848, and February 3, 1853. Each one of these successive acts, like the act of 1828, vests in the beneficiary an absolute and unconditional right to the pension it grants, from a certain specified day; and each, like said act of 1828, is entirely

silent as to the rights of heirs or representatives, to recover any pension which a beneficiary may have died entitled, but without establishing his or her claim thereto, during life. Nevertheless, all these acts have been uniformly construed to vest in the beneficiaries descendable rights, in case of death without establishing or even asserting a claim; and the acts of March 2, 1829, and June 19, 1840, have been uniformly construed to apply to cases of this kind, under each of the above-mentioned acts, and to regulate the course of descent. The question as to the rights of widows and children under the acts of 1828 and 1832, and of children under the various widow's acts, has been repeatedly reviewed by attorneys general and heads of departments, and always with one uniform result, (in favor of their claims,) until reviewed by the present Attorney General in September last. No longer ago than the year 1856, the whole subject was elaborately reviewed by Mr. Attorney General Cushing, who, although expressing some doubts as to the original correctness of the construction given to said acts, nevertheless arrived at the conclusion, that a 'continuous series of uniform decisions on this point, in numerous cases, for many years, under successive administrations of the subject matter,' had rendered this construction 'the established rule of the government,' which ought to be acquiesced in, without recurring to doubts whether it was strictly correct in its inception.

"Not only has this construction of the laws in question been adhered to by the executive departments for more than a quarter of a century, but during that time it has been acquiesced in, if not expressly sanctioned, by every Congress. Large appropriations have annually been made by Congress for the payment of revolutionary pensions, with a full knowledge that large portions of the amounts so appropriated were being applied to the settlement of claims never allowed in the lifetime of the parties primarily entitled; and numerous special acts have, from time to time, been passed for the payment of claims of the same character.

"The act of May 15, 1828, and the various revolutionary pension acts subsequently passed, are all precisely alike in language and form, so far as the same can effect the question of survivorship. In no one of these successive acts has Congress inserted any clause indicating an intention that the same construction should not be given to it in this respect, which had uniformly prevailed under the prior acts of the series. In passing each of these successive acts, therefore, Congress has, by the clearest implication, adopted the well known construction which had been given to prior acts in the same form, and on the same subject.

"Your committee, after mature deliberation, has arrived at the conclusion, that the long and uniform course of practice which has prevailed under these acts, sanctioned, as it has been, by repeated decisions of high executive officers charged with their execution, and acquiesced in by other departments of the government, ought, upon every principle of law, justice, and sound policy, to be considered as settling all doubts as to the original correctness of the construction upon which that practice has been based, and as establishing the rights

of parties under said acts, beyond the legitimate power of mere executive officers to disturb them.

"There can be no urgent necessity, at this day, for changing the practice which has so long prevailed. The settlement of claims of this character must necessarily be drawing rapidly to a close. A few years' continuance of the practice which has hitherto prevailed, would put an end to them forever. However large the amount which has hitherto been drawn from the treasury in the liquidation of these claims, the amount which will be required to settle such as are still outstanding cannot be large enough to justify a resort to extraordinary measures, and the exercise of very doubtful powers, to defeat them.

"Your committee, entertaining these views, are of the opinion that the relief sought by the numerous petitioners whose claims have been referred to them, ought to be granted by general, and not by special legislation; and therefore recommend the adoption of the accompanying joint resolution."

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 486.

EXPLANATORY OF ACT TO CONTINUE HALF PAY TO CERTAIN WIDOWS AND ORPHANS.

[To accompany Joint Resolution No. 14.]

MAY 4, 1860.

Mr. POTTER, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred a joint resolution explanatory of the act entitled "An act to continue half pay to certain widows and orphans, passed February 3, 1853," have had the same under consideration and submit the following report:

That the second section of the act of Congress, approved February 3, 1853, provides as follows: "That the widows of all officers, non-commissioned officers, musicians, and privates, of the revolutionary war, who were married subsequent to January, A. D. eighteen hundred, shall be entitled to a pension, in the same manner as those who were married before that date."

Your committee have no doubt that it was the intention of Congress in passing said act, to grant pensions to the widows in said section described, from the 4th day of March, 1848, under the law existing and in force at the time of the passage of the act of February 3, 1853; and such is the construction of said section by the Court of Claims in the case of Jane Smith.

Your committee entertaining these views, are of the opinion that the construction given to the second section of the act of February 3, 1853, by the Court of Claims is the just construction, and therefore report back said resolution with the recommendation that it do pass.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 487.

MARY BIRD, HEIR-AT-LAW OF WILLIAM BAXTER.

MAY 4, 1860.—Laid upon the table, and ordered to be printed.

Mr. VERREE, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of Mary Bird, heir-at-law of William Baxter, a soldier of the revolutionary war, report:

That inasmuch as it appears from the petition that William Baxter, the father of the petitioner, on account of whose services she asks for a pension, died, as did his widow, before the passage of any pension laws, there is no special equity in the case; and it is also one which, under the general rule adopted by the committee, calls for an adverse report; they therefore ask to be discharged from its further consideration.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 488.

JOHN R. NOURSE AND OTHERS.

[To accompany Bill S. No. 177.]

MAY 4, 1860.

Mr. TAPPAN, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred Senate bill No. 177, *for the relief of John R. Nourse and others, beg leave to report:*

In 1832 Mr. Nourse become one of the sureties upon the official bond of William P. Zantzinger, a purser in the Unsted States navy. Zantzinger was not ordered to sea until 1837; that, previous to his leaving the United States, a rumor got into circulation that he was in arrears to the government, and the sureties becoming alarmed protested to the department against his being intrusted with more money at his risk, and asked that Zantzinger be required to give new bonds. He was, however, sent to sea without his bond having been renewed.

In 1843 Mr. Zantzinger renewed his bond, of which fact Mr. Nourse was duly informed. Soon after this, suit was brought upon the old bond and judgment rendered against the principal and sureties for $8,000. Of this amount Zantzinger paid $5,724, still leaving a balance against him on the judgment of $2,276. Prior to his death, Mr. Zantzinger appealed to Congress for relief, upon the grounds that the government was largely in his debt for purser's stores he was forced to throw overboard while purser of the United States ship Hornet on a cruise in the Indian ocean during the war of 1812. The Hornet was chased by an enemy's ship of greatly superior force; and as one of the expedients to save the ship, the commander caused not only all her armament but all the purser's stores to be thrown overboard. Captain Newton testifies that Zantzinger's loss could not have been less than $8,000, which would balance the entire judgment rendered against him afterwards on his official bond.

In view of all these facts, your committee have no hesitation in saying that the sureties on Zantzinger's bond should be relieved against the balance due on the judgment. 1st. Because they were not legally liable for any default after the notice given the government; and

secondly, because the facts show that Zantzinger was not a defaulter to the government had his losses on the Hornet been allowed him. Your committee therefore report the Senate bill back without amendment and recommend its passage.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 489.

REPRESENTATIVES OF DAVID G. BATES.

[To accompany Bill H. R. No. 115.]

MAY 4, 1860.

Mr. WALTON, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred House Bill No. 115, *for the relief of the legal representatives of David G. Bates, and also the petition of Charity Bates, for refunding lead rents, have considered the same, and report:*

That this claim depends upon the same principles as that of Moses Mecker, reported on the 19th of March last, and also of the claims of J. P. B. Gratiot and Henry Gratiot, and Joseph Hardy and Alton Long, which have heretofore been allowed by Congress.

It appears, by annexed letters from the Treasury Department and General Land Office, that David G. Bates paid 117,431 pounds of lead as rent prior to the dates of the treaties by which the lead lands on the upper Mississippi came into the undisputed possession of the United States.

The petitioner alleges that while this rent was exacted by the United States rent was also exacted by and paid to the Indians, who claimed the land on which the lead mines were located.

Your committee are of opinion that the bill ought to pass.

TREASURY DEPARTMENT,
Second Auditor's Office, March 5, 1860.

SIR: Your letter of the 29th ultimo to Hon. Howell Cobb, Secretary of the Treasury, enclosing petition of Charity Bates, "asking a return of rents paid on lead," has been referred to this office.

In reply, I have to inform you that no returns of rent lead were made to this office prior to July 1, 1829. The petitioner states that her husband paid those rents from the year 1823 to the time of the treaty between the United States and the Sacs and Foxes, which was ratified February 13, 1833. The only rent-lead paid by David G. Bates that appears in this office was for the fourth quarter of 1831, 4,016 pounds, and third quarter of 1832, 5,546 pounds, making 9,562 pounds. In

the fourth quarter of 1832, 4,899 pounds appear to have been paid by Bates and *Boygus*. The enclosed copy of a letter addressed to John Wilson, esq., on the subject, dated ——, will furnish all the information in possession of this office relating to the matter.

The petition of Mrs. Bates is herewith returned.

Very respectfully, your obedient servant,

T. J. D. FULLER,
Second Auditor.

Hon. MASON W. TAPPAN,
Chairman Committe of Claims,
House of Representatives, Washington City, D. C.

GENERAL LAND OFFICE,
March 14, 1860.

SIR: I have the honor to return, herewith, the petition of Charity Bates, which you referred on the 10th instant, and, in reply to your inquiry, state that it appears from the returns of the superintendent of the United States lead mines on the upper Mississippi that David G. Bates paid 107,869 pounds of lead for rent prior to July 29, 1829.

I have the honor to be your obedient servant,

JOSEPH S. WILSON,
Commissioner.

Hon. E. P. WALTON,
House of Representatives,
Chairman Committee of Claims.

IN THE HOUSE OF REPRESENTATIVES, *March* 19, 1860.

Mr. WALTON, from the Committee of Claims, made the following report.

The Committee of Claims, to whom was referred the petition of Moses Meeker, asking for a return of rent-lead erroneously exacted from him, for mining and smelting in the Upper Mississippi lead mines, report:

That they have examined the case, and adopt the following report, made by Mr. Davidson, from the Committee of Claims, on the 31st of March, 1859.

"That Moses Meeker, the petitioner, previous to the year 1823, made an arrangement with the Winnebago, Ottawa, Pottawatomie, and Chippewa Indians, and obtained from them permission to work certain lead mines on the lands occupied by them on the Upper Mississippi, within the Territories of the United States, and to which their title had not been extinguished.

"Some time after this arrangement was made, it seems that the agent of the United States saw fit to contest the right of Mr. Meeker

to carry on the business of mining and smelting, and insisted upon his paying rent to the United States for the use of the mines, and taking from them a lease or license to that effect. When this interference with the operations of Mr. Meeker first took place appears to have been in the year 1825, as rent was paid during that year by him to the United States, as appears from the receipts of said Meeker and the books of the United States lead agency, now on file in the General Land Office, in Washington, several copies of leases and permits, signed by Lieutenant M. Thomas, superintendent of United States lead mines, the earliest dated in May, 1825, giving Mr. Meeker permission to mine and purchase and smelt lead, stipulating to pay a certain rent therefor, have been exhibited to the committee.

"The Indian title to the land on which the mines were situated was not extinguished until 1829 and 1832, when the treaties of Rock Island and Prairie du Chien were respectfully made (see 7 vol. Stat. at Large, pp. 320 and 370) with different tribes occupying them. From the time the agents of the United States first claimed rent for working of these mines, it appears from a statement furnished by the Commissioner of the General Land Office, with his letter dated January, 1859, that Mr. Meeker had delivered to the United States, up to 1830, the time when the Prairie du Chien treaty went into effect, 125,000 pounds of lead.

"Your committee are of the opinion that the rent so exacted from the petitioner was wrongfully exacted, and that it is the duty of the government to refund the amount so unjustly taken from him. This view has been twice taken by Congress: first, in the year 1848, when Congress passed an act for the relief of J. P. B. Gratiot and Henry Gratiot; and, second, at the present session, in the case Joseph Hardy and Alton Long. Both of the above cases are precisely parallel with the case under consideration; the Gratiots and Hardy and Long mined and smelted in the same neighborhood with Meeker, and their rights rest upon the same foundation.

"Your committee, therefore, do not hesitate to recommend the passage of the bill herewith reported, providing for the liquidation and payment to the petitioner of the value of the lead so received by the United States."

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 490.

HENRY E. MARBLE AND OTHERS.

MAY 4, 1860.—Ordered to be printed.

Mr. ELIOT, from the Committee on Commerce, made the following

REPORT.

The Committee on Commerce, to whom were referred the petitions to authorize a change of the name of the sloop "Artist," of Somerset, report:

That on application to the Treasury Department it appears that should a change in the name of vessels follow the many changes of tonnage and rig, much confusion would be produced in the tonnage records of the department, and, without some adequate reason therefor, your committee are averse to authorizing such changes. No such reasons appearing in this case, I am directed to report adversely to the granting the prayer of the petitioners.

The communication from the Treasury Department is annexed hereto.

TREASURY DEPARTMENT, *March* 27, 1860.

SIR: I have the honor to return herewith the memorial of Henry E. Marble and others, for a change of name of the sloop "Artist," and have to state in reply, that I find the only reason alleged for the change is, that the vessel has been repaired and enlarged. Similar changes in the tonnage of vessels, and their denomination and rigging is, as you are well aware, of very frequent occurrence; and if allowed in every case, would, to a great extent, subvert the policy of the existing law, and produce much confusion in our tonnage records.

In view of the past legislation of Congress on this subject, and the injury that might result from this case as a precedent, I must decline to recommend that the prayer of the memorialists be granted.

I am, very respectfully,

HOWELL COBB,
Secretary of the Treasury.

Hon. E. B. WASHBURNE,
Chairman of the Committee on Commerce,
House of Representatives.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 491.

CAPTAIN THOMAS HAZZARD—HEIRS AND LEGAL REPRESENTATIVES OF.

[To accompany Bill H. R. No. 687.]

MAY 4, 1860.

Mr. VANCE, from the Committee on Revolutionary Claims, made the following

REPORT.

The Committee on Revolutionary Claims, to whom was referred the memorial of C. A. S. Graham and Sarah T. Hazzard, heirs-at-law of Captain Thomas Hazzard, a captain in the service of the United States in the revolutionary war, have duly considered the same, and submit the following report:

The committee, from the proofs before them, find that Thomas Hazzard was a captain in the service of the United States during the war of the revolution, and the memorialists, two aged women, are his only surviving children; that Captain Hazzard was a man of independent circumstances prior to the war, and engaged in a prosperous business; that after the declaration of war and the invasion of our soil by the British forces, he joined the association known as the "Liberty Boys," in the city of New York, and made himself useful in any way that could serve the cause of independence; that he equipped, at his own expense, a company of militia, which he commanded in person, and was present at the battle on Long Island, in which he participated with the other troops under the command of General Putnam, in the month of August, 1776; that he was among those taken prisoners, and confined in the prison known as the "old sugar-house;" that while thus confined the whole of his property that could be reached by the invading forces was destroyed or appropriated by those who sympathized with the British court, and who seized upon the opportunity to do so; that property exceeding twenty thousand dollars in value was thus destroyed, so that when he was finally released from prison he found himself utterly impoverished; that the said Captain Hazzard never received any compensation from the United States for these losses, nor for the moneys expended in equipping the company of militia as aforesaid, nor did he during his life ever make a claim for any relief, but said that "when my children need it they can apply."

The facts above stated are well sustained by the sworn evidence

filed in the case, which leaves no doubt in the minds of your committee that Captain Hazzard was among those patriots who risked life and fortune for their country's cause, and that his aged and infirm children deserve a just and proper indemnity for the sacrifices and services of their father, which opinion was fully concurred in by the Committee on Revolutionary Claims during the thirty-fifth Congress, a minority of whom, as is shown by the deposition of one of the members of it, insisted that full twenty thousand dollars should be allowed, but the majority fixed upon six thousand dollars as a fair and equitable allowance, and accordingly reported House Bill No. 22 of that session for the relief of the claimants, but before the case could be acted upon the papers, which were taken charge of by the Hon. Jacob Broom for the purpose of giving them the requisite attention, were accidentally mislaid, and not recovered until the present session of Congress.

Your committee, though the abundant proof before them might have warranted them in increasing the sum allowed by their predecessors to the memorialists, have concluded not to do it, but feel at liberty to say that the sum of six thousand dollars is a very moderate indemnity, considering all the facts and circumstances of the case, and accordingly report a bill for that amount, and respectfully ask its passage.

In conclusion, your committee beg leave to state that as the memorialists, who are far advanced in life, and in exceedingly needy circumstances, and have been delayed for four years by the mislaying of the papers and proofs referred to, they are entitled to all possible expedition on the part of Congress in adjusting their claim before the adjournment of the present session.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { MIS. DOC. No. 81.

MAIL-ROUTE FROM RED BLUFF TO SUSANVILLE.

RESOLUTIONS

OF

THE LEGISLATURE OF CALIFORNIA,

ASKING

The establishment of a mail-route from Red Bluff, in Tehama county, to Susanville, in Honey Lake valley, and offices at Lost Camp, Pine Grove, and Susanville.

MAY 10, 1860.—Referred to the Committee on the Post Office and Post Roads, and ordered to be printed.

CONCURRENT RESOLUTIONS relative to the establishment of a certain mail-route in the northern portion of this State.

Resolved by the senate, the assembly concurring, That our senators in Congress be, and they are hereby, instructed, and our representatives requested, to use their influence to procure the passage of a law establishing a mail-route and weekly service thereon from the town of Red Bluff, in Tehama county, to Susanville, in Honey Lake valley, and the establishment of post offices on said route at Lost Camp and Pine Grove, in Shasta county, and at Susanville, in the State of California, and to procure a sufficient appropriation to render said mail service effective.

Resolved, That his excellency the governor be requested to forward a copy of the above resolution to each of our senators and representatives in Congress and to the Postmaster General of the United States at as early a day as possible.

PHIL. MOORE,
Speaker of the Assembly.
I. N. QUINN,
President of the Senate.

Approved April 6, A. D. 1860.

JOHN G. DOWNEY,
Governor.

STATE OF CALIFORNIA, *Department of State:*

I, Johnson Price, secretary of state of the State of California, do hereby certify that the annexed is a true, full, and correct copy of the original resolutions now on file in my office.

Witness my hand and the great seal of State, at office in Sacramento, California, the 11th day of April, A. D. 1860.

[L. S.]

JOHNSON PRICE,
Secretary of State,
By E. E. EYRE, *Deputy.*

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 493.

CAPTAIN ANDREW RUSSELL—HEIRS OF.

[To accompany Bill H. R. No. 689.]

MAY 4, 1860.

Mr. VANCE, from the Committee on Revolutionary Claims, made the following

REPORT.

The Committee on Revolutionary Claims, to whom was referred the memorial of the heirs and representatives of the late Captain Andrew Russell, of the Virginia line, on continental establishment, in the war of the revolution, praying half pay for life for the services of their said ancestor, have had the same under careful consideration and beg leave to report:

That they find, by undisputed record evidence, that the said Captain Russell enlisted in the 5th Virginia regiment in 1778, and took the oath of allegiance and was commissioned as captain in said regiment on the 12th day of May, 1778, and served to the end of the war. This is proven by the official records in the Department of State, as the following extract from a letter from the Assistant Secretary to Mr. Lovejoy will show: "In compliance with your inquiry relative to the services of Captain Andrew Russell, I have the honor to state, that upon due search being made, his name is found upon the original list of officers who served until the end of the war of American independence in the Virginia line, or were deranged by acts of Congress." And it also appears to your committee, from evidence of the same authentic character, that towards the close of the war Captain Russell was "left out" by the reduction of his regiment. It is also shown that he received land from the State of Virginia, and his heirs received land also from the United States, which they could not legally have obtained unless his allegation of service had been proven before the department. As it appears that neither he nor his heirs ever received half pay or commutation, and as your committee are of opinion that he is justly entitled to the same, they report the accompanying bill, and earnestly recommend its passage.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 494.

CAPTAIN RICHARD JONES—GRANDCHILDREN OF.

[To accompany Bill H. R. No. 690.]

MAY 4, 1860.

Mr. VANCE, from the Committee on Revolutionary Claims, made the following

REPORT.

The Committee on Revolutionary Claims, to whom were referred the petition, papers, and a bill relating to the claim of the grandchildren of the late Captain Richard Jones, who was a captain of light-horse and militia in the war of the revolution, have had the same under consideration, and submit the following report:

It appears from the papers in this case, which are voluminous, that Captain Richard Jones did serve, as his grandchildren assert, for a long time, say from three to five years, in the war of American independence, from South Carolina and Georgia, under General Pickens and others; as proof of this record, evidence from the comptroller of South Carolina is produced showing that there was paid him moneys amounting to some twenty-five months' service as a captain of dragoons; also a number of affidavits of aged and highly respectable citizens affirming to the high character and general belief that Captain Richard Jones, the officer named, did perform such service. For these reasons, in the opinion of the committee, the pension which was due him up to the period of his death should be paid to his grandchildren surviving. The committee therefore report a bill for their relief.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 495.

R. C. MARTIN.

[To accompany Bill H. R. No. 693.]

MAY 4, 1860.

Mr. ETHERIDGE, from the Committee on Indian Affairs, made the following

REPORT.

The Committee on Indian Affairs, to whom was referred the petition of Richard C. Martin, praying that an appropriation be made for the payment of a draft for $1,050 drawn by G. W. Barbour, Indian commissioner, on Ridick McKee, disbursing agent for the United States in California, beg leave to report:

That in the year 1851 Thomas W. Lane furnished beef cattle to said Barbour for the use of the Indians in California who were then threatening hostilities on account of their starving condition, and received from said Barbour his draft on the then disbursing agent of the United States, Ridick McKee, for one thousand and fifty dollars, which said draft was duly presented for payment, but was not paid, because the appropriation for the purpose of maintaining peace with the Indians in California was exhausted. That subsequently said Lane assigned, by indorsement, said draft to the petitioner, for the sum of one thousand and fifty dollars, the full amount and value of the same; that at the first session of the thirty-fifth Congress petitioner presented his petition (and filed said draft with the same) to the Congress of the United States, which, together with said draft, was lost or mislaid without his negligence or fault; that at the second session of said thirty-fifth Congress he presented his petition, setting forth the facts and alleging the loss of the papers filed at the first session, and the Committee on Indian Affairs unanimously authorized a report in favor of the petitioner, but owing to the want of time by reason of the expiration of the session, report was not made, and the papers in the case were lost or mislaid, and cannot now be found. The committee are satisfied of the authority of Barbour to draw said draft, and of the legality and genuineness of the assignment to Martin, and that said draft has never been paid, therefore report the accompanying bill; and in consideration of the peculiar circumstances attending the claim recommend that it be passed at the earliest possible day.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 496.

ANTOINE ROBIDOUX.

[To accompany Bill H. R. No. 694.]

MAY 4, 1860.

Mr. BUFFINTON, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of Antoine Robidoux, a citizen of the Territory of New Mexico, make the following report:

That this claim was before the thirty-fourth Congress, and the Committee on Military Affairs of that Congress, during the first session, made the following report thereon:

"That the said Robidoux was employed by General Kearney, in 1846, to proceed with his command as an interpreter; that he attached him to his staff, and promised to send to Washington and obtain a commission for him, which, if ever sent for, was never received by the memorialist. The said Robidoux marched with the army to Santa Fé, in New Mexico, and thence to California, where, at a place called San Pascual, on the 6th of December, 1846, a battle ensued with the Mexicans, in which the said Robidoux was wounded with a lance in the spine, which produced blindness, under which unfortunate affliction he is now suffering. Being, on account of this wound, unable to return with the army from California, he was discharged there without any allowance to pay his travelling expenses home. On account of his disability he was obliged to remain in California some three months before he could get a passage home, being unable to travel by land. Finally, by a slow and tedious journey, *via* Peru, Jamaica, and other places, he was enabled to reach New Orleans.

"It is for a remuneration by Congress of his travelling expenses that the memorialist now petitions Congress.

"The committee, looking at the great affliction he has suffered in behalf of his country, and at the fact that he was doing duty as a staff officer at the time of his wound, think that he is entitled at the hands of the government to his travelling expenses, and they therefore report the accompanying bill."

Your committee, concurring in said report, herewith present a bill for the relief of the petitioner, and recommend its passage.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No 497.

ELIZABETH SMITH.

[To accompany Bill H. R. No. 337.]

MAY 4, 1860.

Mr. BUFFINTON, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the bill for the relief of Elizabeth Smith, of Coffee county, Tennessee, report:

That the said Archibald Yell, who commanded the regiment of Arkansas cavalry in the late war with Mexico, was killed at the head of his regiment, in the battle of Buena Vista; that at his death he left the petitioner and her sister, Artamesia Yell, his only minor children, and as such minors they drew half pay for several years at the Nashville pension agency; that the said Artamesia has since died, and the petitioner has become of full age, and has married; that during her minority the petitioner was entitled to a bounty land warrant for 160 acres of land, but her guardian failing to apply for the same during her minority, it cannot now be obtained without a special act of Congress in her behalf.

Your committee are of opinion that the bounty land to which the petitioner was clearly entitled by law during her minority ought not to be withheld from her because of the failure of her guardian to take the proper steps to secure it before she came of age, and therefore report the bill back, with a recommendation that it do pass.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 498.

JAMES MONROE.

MAY 4, 1860.—Ordered to be printed.

Mr. BUFFINTON, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the petition of James Monroe, praying compensation for three horses lost in the service of the United States in the war of 1812, *report:*

That the petitioner alleges that while serving as a private in Captain Dunn's company of Indiana Rangers, in the war of 1812, he lost three horses, successively, which he purchased with his own money, at a cost of three hundred and fifty dollars; and that they all died from the effects of hasty marches against the Indians. He refers to the records and files of the Third Auditor's office for evidence in support of his claim, and alleges that the claim was rejected by the department on the sole ground that the horses were not killed in battle.

It appears, from a letter from the Third Auditor, of the 23d of February last, that the papers heretofore filed in said office in support of this claim are not now on file, having been returned to the Hon. R. D. Owen in 1845.

It appears that this claim was presented to Congress shortly after the papers were withdrawn from the Third Auditor's office, by the Hon. R. D. Owen, and the fair presumption is, that all the papers so withdrawn by him were presented to Congress. During the first session of the thirtieth Congress an adverse report was made upon the claim by the Committee of Claims of the House of Representatives, which report, with the memorial of the petitioner, and the evidence in support of the claim, will be found in the second volume of Reports of Committees, H. R., first session thirtieth Congress, No. 202.

The committee reported against the claim on two grounds: first, because "the case did not come within the rules usually respected by Congress when acting upon such cases;" and, second, because of its "not being supported by sufficient evidence, even if it did."

No additional evidence is now presented in support of the claim, and there are some discrepancies between the present and the former statements of the petitioner, which rather prejudice than improve his case. In his petition to the twenty-ninth Congress he alleges that he

lost one bay mare, worth about $85, by reason of a snake-bite; one Indian pony, worth about sixty dollars, by reason of a dislocation of the shoulder; and one small mare, worth about $85, which died of the cholic. In his present petition he alleges that the three horses, "one after the other, died from the effects of hasty marches against the Indians;" and that they cost him $350.

Your committee, concurring in the views presented by the Committee of Claims of the thirtieth Congress, report adversely to the prayer of the petitioner, and ask to be discharged from the further consideration of the subject.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 499.

SAMUEL F. HARRISON.

MAY 4, 1860.—Ordered to be printed.

Mr. LONGNECKER, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the claim of Samuel F. Harrison for services as a teamster, report:

That the petitioner was employed in the service of the government to drive a team from Fort Leavenworth to New Mexico, in the year 1856. He alleges that there was an understanding that he was to receive "transportation" back to Fort Leavenworth. On his arrival in New Mexico he was discharged, and payment for his return trip refused him. He claims two hundred dollars damages. There is no evidence of an obligation on the part of the government to pay him. This claim was presented at the Third Auditor's office for payment, and was properly rejected.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 500.

HARRIET B. HOWE.

MAY 4, 1860.—Ordered to be printed.

Mr. LONGNECKER, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the petition of Harriet B. Howe, make the following report:

The petitioner claims compensation for services rendered the United States as a spy in the war of 1812. She alleges that in 1813, when the British were investing our Canada frontier, she was employed to go within their lines and ascertain their numbers and position. She explains, with much minuteness, the manner in which she accomplished her mission; but there is no other evidence to sustain her than her own declarations and those of a younger brother, who only remembers having heard her story frequently repeated, and believes it to be true. The committee deem the evidence insufficient.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 501.

OHIO VOLUNTEERS.

[To accompany J. R. No. 40.]

MAY 1, 1860.

Mr. CURTIS, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred a joint resolution providing for the payment of two companies of Ohio volunteers, raised during the late war with Mexico, report:

That during the late war with Mexico, several companies of Ohio volunteers beyond the quota (3 regiments) called for from that State, were mustered into the service at Cincinnati, and remained some time encamped near that city, at a place called "Camp Washington," before their services were rejected and the companies discharged.

A joint resolution was passed August 8, 1846, providing that there should be paid to the said companies of Ohio volunteers, assembled at Camp Washington, one day's pay, and allowances for every day stationed in service, and the usual travelling allowances, and no more.

Pursuant to this resolution, 12 companies have been paid by the United States; but the companies of Captain G. M. Mott, of Piqua, and of Captain Small, of Xenia, have not been paid. As the claims of these companies for payment stand upon precisely the same footing as those of the twelve companies which were paid, the committee is of opinion that they are entitled to the benefit of said joint resolution of August 8, 1846, and herewith report a joint resolution expressly extending its benefits to said two companies, and recommend its passage.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 502.

COLONEL WILLIAM GATES.

[To accompany Bill H. R. No. 107.]

MAY 4, 1860.

Mr. CURTIS, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the petition of Colonel William Gates, of the United States army, have had the same under consideration, and present the following report:

During the late war with Mexico, in 1847 and 18 48, Colonel Wm. Gates was appointed and acted as commanding officer and collector of Tampico, in Mexico, during which service he collected and paid over to the United States treasury nearly a million of dollars. Among other sources of his collections was the proceeds of a confiscation and sale of the schooner Oregon and cargo, which was seized and sold for violation of some revenue or national law, said schooner having on board arms and ammunition contraband of war designed for the Mexican army. The sale of the schooner and cargo amounted to $22,270.

Doubts have arisen as to the proper compensation due to those who participated in this confiscation, and it is to secure his fair proportion that Colonel Gates petitions Congress. It seems to have been conceded that four men were entitled to shares of the proceeds, and Colonel Gates divided accordingly as follows:

Colonel Wm. Gates, the collector, one-fourth of one-half...			$2,783 75
Franklin Chase, deputy collector,	do.	do.	2,783 75
Major Forsyth, U. S. army, receiver,	do.	do.	2,783 75
Lieutenant Browning, naval officer,	do.	do.	2,783 75
			11,135 00

Being an equal share to each of half the proceeds.

This division seems to have been made on a supposed application of a revenue law of the United States of 1799, the ninety-first section of which gave to the collector and informer an equal moiety of such confiscations.

It is obvious this law of 1799 had no binding effect in Mexico, and could only be used as an indication of what would seem to be reasonable under the temporary government assumed by us when we conquered and governed the ports of Mexico.

In subsequent acts of Congress and the departments, in settling accounts of officers who served in collecting the revenues in Mexico, a very different rule seems to have been adopted, and Colonel Gates asks to have his accounts adjusted according to such final determination.

An act of March 3, 1849, provides that "all money raised in Mexico, by contributions or otherwise, by any officer of the United States army or navy, * * and all moneys received by any officer, either as contributions or penalties," should be paid over, &c.; and section second provides that when an officer "shall have performed duties of collector at any of the ports of Mexico, such officer shall be allowed a compensation, which shall be assimilated in amount, as nearly as may be, including the regular pay and emoluments of such officers, to that allowed by existing laws to officers of the customs in the United States for similar services in amount and in importance, such allowance in all cases to be determined by the President of the United States."

It seems from a report of R. J. Atkinson, esq., Third Auditor, dated March 28, 1859, that President Fillmore determined to abide by the division which Colonel Gates had previously made, which confirmed to the Colonel $2,783 75.

But subsequently the legal representatives of Lieutenant Browning applied to Congress, and in the civil appropriation act of September 30, 1850, the Secretary of the Treasury was authorized and directed to settle his (Lieutenant Browning's) claim. The Third Auditor says: "Secretary Corwin decided that Lieutenant Browning and the other officers of the Petral were acting as revenue officers, and that under the *proviso* of the 91st section of the act of 1799, they were entitled as *informers;* that one fourth of the proceeds of the vessel and cargo should go to the treasury, one fourth to the officers of the customs, and the remaining half to the officers of the Petral, in proportion to their pay. He therefore allowed Mr. Browning $5,712 45."

It is clear that in this last act, and the finding of the treasury, the act of 1849 is superseded and a new rule instituted, which gave, under the provisions of the act of 1799, $5,712 45 to the "informer."

The same act would, if applied to Colonel Gates, give him $5,712 45 as "collector;" for both the "informer" and "collector" were equally entitled under the act of 1799, and the Third Aduitor says Colonel Gates was the collector, and so he seems to have been regarded in all the departments in the settlement of accounts.

Colonel Gates might rest his case on these facts; and it would seem justice would prescribe to Colonel Gates a more liberal allowance, since he, Colonel Gates, was not allowed during the same time his pay as a colonel in the army, while Lieutenant Browning it is supposd received his in the navy.

Acting on this settlement with Lieutenant Browning as *res judicata*,

subsequent acts have been passed to settle with Crosby and Buckner, August 1, 1854, and they have been paid.

So also Congress passed an act for the relief of Franklin Chase, March 3, 1855, by which he was paid $5,567 50 under a decision of Secretary Guthrie.

After so many subordinates have been paid this sum of $5,567 50, it is, in the opinion of your committee, unfair and unjust to withhold equal compensations to the collector, and therefore they report a bill directing a settlement of the account of Colonel Wm. Gates on the same basis as that allowed his associates.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 503.

CAPT. EDWARD G. ELLIOT—WIDOW OF.

[To accompany Bill H. R. No. 695.]

MAY 4, 1860.

Mr. OLIN, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of Mrs. Asenath M. Elliot, widow of the late Captain Edward G. Elliot, late assistant quartermaster of the United States army, having had the same under consideration, report:

That the late Captain Elliot was appointed assistant quartermaster during the war with Mexico, and was stationed at Vera Cruz, the principal and most important depot of the army commanded by General Scott; as evidence of the fidelity and ability with which Captain Elliot discharged his official duties, Major General Jesup, in a letter to the honorable Jefferson Davis, of the date of April 11, 1860, says: "Able and accomplished as was the chief of that army, and gallant and efficient as were the officers and soldiers who composed it, I think it more than doubtful whether its success could have been so certain and so brilliant had there been the slightest failure at Vera Cruz in the administrative arrangements; and yet the officers there had a more terrible enemy to grapple with than the army in the field; they were obliged to perform their duties surrounded by disease and death, yet no one abandoned his station, but continued in the efficient discharge of his duties until struck by disease or death, and hardly one of them now lives."

That in 1848, and a few months after his marriage with the memorialist, Captain Elliot was ordered to California, and in his official capacity as senior quartermaster was placed in charge of a large amount of property and funds, including fifty thousand dollars in gold belonging to the government, which he was required to take with him by way of the Isthmus.

The memorialist states, and the letters of Major General Smith and of Jesup confirm the statement, that at this period the "gold fever" of California was at its height, and thousands of people were pressing forward by way of the Isthmus to reach that place; that the rains upon the Isthmus had continued much beyond the usual period, and very inadequate means had been provided for the immense amount of

travel and transportation thus suddenly thrown upon the half-civilized population of that region; that individuals anticipating golden harvests were willing to pay extravagant rates to be transported across the Isthmus with their goods. In the midst of this struggle Captain Elliot, while making every exertion to get forward with the public stores and money, was attacked with the cholera, then prevailing there, and died almost immediately. The property and funds in his care (with all of which he was charged upon the books of the treasury) were taken possession of by Brevet Major Edward Fitzgerald, acting quartermaster, and transported to California, including his papers, vouchers, and such of his personal property as Captain Elliot had taken with him, amounting in value, as appears by the testimony of James N. Keller, to upwards of twenty-five hundred dollars. Captain Elliot dying thus suddenly, and his papers and vouchers being scattered, the settlement and adjustment of his accounts were attended with embarrassment and delay. It appears by the statement of the Third Auditor of the Treasury that at the first settlement of Captain Elliot's accounts after his death his indebtedness as quartermaster appearing upon the books of the treasury was $103,229 71; that on a subsequent settlement, in April, 1855, this indebtedness was reduced by admissions to his credit of sundry suspensions and disallowances previously made against him and a deposit of $287 46 to his credit by the administrator on his estate to the sum of $92,064 32. Again, in a settlement of June, 1855, to $44,195 52; again, in January, 1858, to $12,448 30; and finally in September, 1858, by relieving him of a charge of $10,000, *then found to have been erroneously charged to him*, and passing to his credit $565 12 (the amount due him for mileage from Washington, D. C., to Chagres, New Granada, in November and December, 1848,) and $70 23 transferred to his credit from subsistence in August, 1858, and $339 15 transferred to his credit from Second Auditor's office in August, 1858, a balance of $149 46 was found due his estate and was paid over to the administrator. The proofs in this case further show that the memorialist, when apprised of the large balance appearing to be due from Captain Elliot to the government, promptly surrendered up the little remnant of her own private property to relieve, as far as she was able, the memory of her husband from the charge of being a defaulter to that government in whose service he had lost his life.

General Jesup says, in the letter before referred to: "From the integrity, correctness, and strict attention to duty of Captain Elliot, I have not a doubt had he lived he would have been able to account for every dollar and every dollar's worth of property that ever came into his hands."

It is quite apparent, from the facts in this case, that Captain Elliot was a faithful, honest, and efficient officer, and that the whole difficulty of settling his accounts arose from his sudden death and the loss or dispersion of his papers and vouchers, and it is quite probable that the small balance which his salary and private property were applied to extinguish may yet be accounted for if any further examination be had for that purpose. However that may be, we deem it due to the memory of a gallant and faithful officer, who fell in his country's service, that the reproach of being a defaulter should not

stain it, convinced, as we are, that he had discharged his arduous duties with singular fidelity and efficiency up to the moment of his sudden death, and that the failure to account for the small balance appearing to be due the government was owing solely to the circumstances of his death and the necessary difficulty in settling and adjusting his accounts.

It appears that the private property of Captain Elliot, including that of his widow, applied to extinguish the supposed balance due the government, amounted to upwards of thirty-seven hundred dollars. There is some proof tending to show that this property, from which this amount was realized, was sold at a very considerable sacrifice. If interest were allowed on this amount, the sum which would be justly due the memorialist would exceed six thousand dollars, but as Congress has usually refused the payment of interest on claims, however just, we are of opinion that the sum of $5,000 is equitably and justly due the memorialist, and ask leave to introduce a bill to refund to her that amount.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 504.

ROBERT BRENT—REPRESENTATIVES OF.

[To accompany Bill H. R. No. 696.]

MAY 4, 1860.

Mr. OLIN, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of Harriet Brent, widow, and Sarah H. Brent, Ellen Brent, and Caroline Brent, daughters of Robert Y. Brent, now deceased, who was surviving executor of Robert Brent, paymaster, and paymaster general of the army, report:

That in the settlement of the accounts of the late Robert Brent, as paymaster and paymaster general of the army, from the year 1808, to 1829, of great disbursements amounting to $40,386,967 55, a balance of $20,004 94 principal, with interest thereon, is claimed as due from his estate to the United States, for which proceedings were instituted in the courts of the United States, many years ago, and are still undetermined.

And the memorialists pray that these proceedings may be discontinued in consideration of the just and equitable claims, which they pray Congress to allow as set-off, of the said estate against the United States, on the following grounds, to wit:

That, between the years 1808 and 1816, the office of said Robert Brent was changed into that of paymaster general, and a large addition made to the army, by reason of the war with Great Britain, whereby greatly increased duties and responsibilities were imposed upon him without any corresponding increase of compensation, not only in the payment of the regular army, but in the disbursements of great sums in the payment of the militia and volunteers. In addition to which was imposed on him the paying the half-pay pensioners, from all which his successors, though receiving much larger compensation, have been exempted.

That for those extra labors, responsibilities, risks, and the losses that attend such disbursements, he ought to be allowed by Congress, according to the principle which the courts have declared just, and which Congress has repeatedly sanctioned, a reasonable extra allowance or percentage on the amount, at least, of his extra disbursements for the militia, volunteers, and half-pay pensioners, amounting

to $3,041,994 02; for which extra compensation reference is made to the following cases:

1. That of Satterlee Clark, Pamphlet Laws, 1848 and 1849, p. 136, and to act approved March 3, 1849, and report No. 727, H. R., 30th Congress, 1st session.

2. That of Governor Tompkins, Senate doc., 29th Congress, 2d session, No. 114, pages 7, 9, and 13, and Pamphlet Laws of the United States, 1847, p. 24, and act approved February 22, 1847.

3. That of Ex-President Monroe, 20th Congress, 2d session, doc. No. 26; H. R., Ex. Doc., 20th Congress, 2d session, No. 76; reports of committee, 20th Congress, 2d session, No. 96, and 21st Congress, No. 276.

4. For allowance of interest, to the case of heirs of Colonel Charles Simms, Rep. No. 12, 34th Congress, 1st session, and bill, H. R. No. 207.

That the said Robert Brent had great difficulties, and some inevitable losses in keeping his accounts with the banks, dispersed all over the Union at that period, from many of which, to this day, no account has ever been received, and many of which have long since become insolvent. That at a period of great difficulty in the financial affairs of the country, towards the close of the war of 1812, and of great public necessity, in order to send the army under General Jackson to the defence of New Orleans, the said Robert Brent, with Colonel Monroe, then Secretary of War, raised a large sum of money from the banks, thereby pledging his whole private fortune to accomplish a great public service. That in addition to the official duty and responsibility in paying the regular army, that of endorsing and paying over large sums of treasury notes was imposed upon the said Robert Brent, with heavy risks and much additional labor, for which extra labor and risk, added to the disbursements on account of militia, volunteers, and half-pay pensioners, he never received any extra compensation.

That if the proceedings in equity alluded to, which are still pending, should proceed to a final decree, the small remnant of property left by Robert Y. Brent, surviving executor and son of said Robert Brent, by the effect of the priority claimed by the United States in such cases, will be completely absorbed, and the claims of his private creditors defeated, and the memorialists, assignees of the majority of the heirs-at-law of said Robert Brent, will be left penniless.

That the great-grandfather of the daughters of said Robert Y. Brent was one of the original proprietors of the city of Washington, and surrendered gratuitously one-half of his farm to the government for the seat of the federal metropolis, in the delusive expectation that he would find compensation for what he had surrendered in the improved value of city lots, into which the balance was converted. But that the fallacy of those hopes is matter of public notoriety, for the government having put the lots it held into the market at once, at low rates, the taxation which ensued enforced the sale of those held by the original proprietors at a ruinous sacrifice, and the result was the almost total loss of the whole property.

The committee being satisfied that the considerations thus stated are sufficient to establish an equitable case for the favorable action of

Congress, and that no appropriation from the treasury is called for, are of opinion that the proper accounting officers of the treasury should be directed to adjust, upon equitable principles, the accounts of the said Robert Brent, and that whatever balance may be due to his estate should be set off against the suits now pending by the United States in the District of Columbia.

They report the accompanying bill as embodying the views of the committee, and recommend its passage.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 505.

DR. THOMAS P. ANDERSON—WIDOW OF.

MAY 4, 1860.—Ordered to be printed.

Mr. SCHWARTZ, from the Committee on Naval Affairs, made the following

REPORT.

The Committee on Naval Affairs, to whom was referred the memorial of Sarah F. Anderson, the surviving widow of Dr. Thomas P. Anderson, who was regularly commissioned as a surgeon, and served in the navy of the late republic of Texas for several years previously and up to the period of annexation to the United States, and who departed this life near the close of the year 1847, *leaving his family with limited means of support or education, report:*

That an act was passed and approved March 3, 1857, as follows:

SEC. 12. *And be it further enacted,* That the surviving officers of the navy of the republic of Texas, who were duly commissioned as such at the time of annexation, shall be entitled to the pay of officers of like grades, when waiting orders in the navy of the United States, for five years from the time of said annexation, and a sum sufficient to make the payment is hereby appropriated out of any money in the treasury not otherwise appropriated: *Provided,* That the acceptance of the provisions of this act by any officer shall be a full relinquishment and renunciation of all claim, on his part, to any further compensation on this behalf from the United States government, and to any position in the navy of the United States.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 506.

WILLIAM MAXWELL WOOD.

[To accompany Bill H. R. No. 697.]

MAY 4, 1860.

Mr. J. M. HARRIS, from the Committee on Naval Affairs, made the following

REPORT.

The Committee on Naval Affairs, to whom was referred the memorial of William Maxwell Wood, a surgeon in the navy of the United States, beg leave to report:

That it appears from the papers in this case that the petitioner is a surgeon in the navy, and was, in the winter of 1857–58, doing duty as surgeon to the East India squadron, which position he had then held for two years and three months. At that date the flag-officer, James Armstrong, the commander-in-chief of the squadron, who had long been in bad health, was ordered to return to the United States by the overland route, and issued to the memorialist the following orders:

A.

U. S. FLAG-SHIP SAN JACINTO,
Hong Kong, December 29, 1857.

SIR: Having received orders to return to the United States by the overland route, I do not feel competent to do so, in my failing health, without a medical attendant. You will, therefore, transfer the medical charge of this ship, by the 12th January, 1858, to the senior assistant surgeon, and prepare to accompany me by the next steamer.

I am, very respectfully, your obedient servant,

JAS. ARMSTRONG,
Flag-Officer Com'g U. S. Naval Forces,
East India and China Seas.

Fleet Surgeon WILLIAM MAXWELL WOOD,
U. S. Steam Frigate "Minnesota," Hong Kong.

B.

U. S. FLAG-SHIP "SAN JACINTO,"
Hong Kong, January 29, 1858.

SIR: You will proceed with me by the overland route, via England, to New York; and, upon your arrival at New York, you will report yourself by letter to the honorable the Secretary of the Navy.

I am, very respectfully, your obedient servant,

JAS. ARMSTRONG,
Flag-Officer Com'g U. S. Naval Forces,
East India and China Seas.

Fleet Surgeon WILLIAM MAXWELL WOOD,
U. S. Steam Frigate "San Jancinto," Hong Kong.

At the same time that these orders were issued to Surgeon Wood, Commodore Armstrong directed his own secretary and servant to accompany him to the United States.

When the memorialist in this case, acting under these orders of his commanding officer, reached the United States and reported himself to the Navy Department, the Secretary of the Navy disapproved the orders thus given him by Commodore Armstrong, put the memorialist upon "leave of absence pay" from the day that he left the East India squadron, and further refused to allow him travelling expenses, as provided by the second section of the act of 1835. The department, however, *allowed* the travelling expenses of the commodore's secretary and servant. During the travel home the memorialist had no control over his movements or of the expenditure of the money. It is further well to state that at the request of the United States consul at Canton, made by authority of the State Department, he brought home gratuitously (though such service is usually compensated) the confirmed treaty with Siam, which had been long delayed for want of a responsible opportunity of transmission; which service involved trouble, responsibility and expense to him.

The papers in the case disclose the correspondence between the department and Commodore Armstrong, as to the travelling expenses of Surgeon Wood, in which the department places its refusal to make such allowance, in Surgeon Wood's case, upon the absence of right in the commanding officer to direct him to return with him to the United States. They also disclose in the correspondence between Surgeon Wood and the Fourth Auditor the same reasons as controlling the decision of the department, cutting him down from "duty" to "leave of absence pay" from the time of his departure from the East Indies.

The committee do not care to review the question of the propriety of Commodore Armstrong's action, nor to settle the difference of opinion as to powers between the department and that officer. They consider that the plain fact in the case is that the commanding officer of Surgeon Wood gave him orders which it was his business, as a subordinate, not to argue about, but to obey. If the superior officer transcended his powers he is amenable to the censure of the department; but his error of judgment ought not to be visited upon one

who simply obeyed orders coming to him in the line of his duty, and from unquestionable authority, so far as he was concerned. To have refused obedience would have been a grave offence upon his part, and might have subjected him to the loss of his commission. Entertaining this view of the case, the committee are of opinion that it is unjust to Surgeon Wood to put him on "leave of absence pay," under the circumstances, and to refuse the allowance of travelling expenses, and they therefore have directed the report of the accompanying bill in his favor.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 507.

RALPH KING.

[To accompany Bill H. R. No. 698.]

MAY 4, 1860.

Mr. E. JOY MORRIS, from the Committee on Foreign Affairs, made the following

REPORT.

The Committee on Foreign Affairs, to whom was referred the memorial of Ralph King, late United States consul at Bremen, asking for compensation for diplomatic and other extra services, have had the same under consideration, and they beg leave to report:

That the memorialist acted as United States consul at the port of Bremen during the years 1851, 1852, and 1853. During this period the United States government had no diplomatic agent in the republic of Bremen, and neither a diplomatic agent or consul in the adjoining kingdom of Hanover. It consequently "became necessary," as is stated in a letter before the committee, from the Hon. Wm. L. Marcy, Secretary of State, "for Mr. King, in his efforts for the protection of persons and property of American citizens, and in defending their rights, unjustly assailed, to enter into correspondence with the local authorities both of Bremen and Hanover, and discuss questions entirely diplomatic in their character, requiring careful consideration, and much legal knowledge. The department has also reason to believe that Mr. King was subjected to some pecuniary expenses in consequence of being compelled to leave his consulate, and visit Hanover, for the purpose of having private interviews on public business with the local authorities."

This is very evident to the committee from the examination of a statement of the facts connected with the cases referred to by Mr. King in his memorial, furnished by the Department of State. It appears that:

In August, 1851, Mr. King called the attention of the Bremen Senate to an infraction of the rights of American citizens who were denied the equal commercial privileges with the citizens of Bremen, guaranteed to them by the treaty of 1827. They were compelled to transact their business through the agency of a privileged class of Bremen citizens, or submit to the payment of an annual tax of fifty

rix dollars, when Mr. King entered his protest against it. At the conclusion of a long correspondence on the subject, it was announced that the Senate of Bremen had been induced to instruct their authorities to admit citizens of the United States to full and equal commercial privileges.

In October, 1852, Mr. King commenced a correspondence with the authorities, demanding the release of an American citizen, who was unjustly imprisoned for debt, and after a protracted correspondence, he succeeded in obtaining his release in January, 1853.

Through the exertions of Mr. King, in consequence of the frequent complaints made by United States shipmasters, of the arrest of their seamen for debt at Bremerhaven, the government of Bremen passed a law by which engagements made by seamen were regarded as illegal, and having no binding force. It will be remembered that, in 1829, Bremen acquired this port of Bremerhaven from Hanover, but that kingdom exercises full sovereignty over the Weser to the middle of the river. Thus vessels leaving Bremen or Bremerhaven are compelled to pass through waters over which Hanover claims jurisdiction.

Profiting by this, a claim at Bremerhaven on five seamen of the bark "Arethusa" was transferred to a subject of Hanover, and the men were thrown into a Hanoverian prison. There was not, as has previously been stated, any diplomatic representative or consul of the United States in Hanover, and as it would have taken several months to have received instructions from the State Department, Mr. King assumed the responsibility. Addressing himself to the Hanoverian authorities, he demanded the immediate discharge from prison of the five American seamen, and the payment of the amount of damage sustained by Captain Crowell in the detention and exposure of his vessel. A lengthy correspondence ensued, which was concluded by a letter from the Hanoverian minister, Baron Van Scheele, informing Mr. King that the seamen had been released, and that a passage to New York had been provided for them.

In the above-mentioned cases Mr. King exercised functions properly belonging to diplomatic agents, and his action, as narrated in numerous dispatches from him now on file at the Department, met the approval of the Secretary of State. Mr. Marcy further stated that there are two or three other cases "in which his active exertions were used in behalf of naturalized citizens of these United States, who were arrested in Hanover on claims for military service alleged to be due to that government, and who probably were indebted for their release to his strenuous efforts."

Appropriations have repeatedly been made by Congress for the remuneration of United States consuls who have performed diplomatic duties in the absence of a United States minister or chargé d'affaires, but the committee are not aware of any appropriation having been made for extra services performed by a consul where a United States mission had not been previously established.

Your committee do not propose to establish a precedent, by declaring that all extra services performed by consuls—either in countries where there are, or where there are not diplomatic agents—entitle them to compensation therefor. This claim of Mr. King's, however, for suc-

cessfully defending the rights of American citizens, and for protecting their persons and their property, both in Bremen and in Hanover, is recognized by the Department of State as for services "entirely diplomatic in their character," which also subjected him to some pecuniary expenses.

Concurring with the Secretary of State in his opinion of the nature and of the value of these services, the committee are of opinion that Mr. King is entitled to one-half of the amount which he claims, the sum of five hundred dollars per annum, making fifteen hundred dollars in full, for all services rendered by him while United States consul at Bremen. They therefore report a bill in his favor for that amount, and recommend its passage.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 508.

SLAVERY IN THE TERRITORY OF NEW MEXICO.

[To accompany Bill H. R. No. 64.]

MAY 10, 1860.—Ordered to be printed.

Mr. BINGHAM, from the Committee on the Judiciary, made the following

REPORT.

The Judiciary Committee, having had under consideration the bill referred to them entitled "A bill to repeal all acts of the legislature of New Mexico authorizing slavery or involuntary servitude, except as punishment for crime," report the same back to the House of Representatives, with an amendment that the same do pass, and that it be put upon its passage; that the committee further report that for the organization of said Territory of New Mexico by the act of September 9, 1850, (U. S. Statutes at Large, vol. 9, p. 449, sec. 7,) it is provided that "all the laws passed by the legislative assembly and governor shall be submitted to the Congress of the United States, and if disapproved shall be null and void."

The territorial statutes referred to in the bill, and certain sections whereof are disapproved thereby and declared null and void, are as follows: "An act amendatory of the law relative to contracts between masters and servants," approved by the territorial legislature of New Mexico January 26, 1859.

SECTION 1. When any servant shall run away from the service of his master he shall be considered as a fugitive from justice, and in such case it shall be the duty of all officers of the Territory, judicial or ministerial, on being informed that such persons are within the limits of their jurisdiction, to ascertain whether such persons are runaway servants or not, and if they ascertain that they are, said officers shall immediately arrest them and put them to work at public labor, or hire them out to any person so that they may be employed, with security, until their master shall be informed thereof, in order that they may demand them, and to whom they shall immediately be delivered.

SEC. 2. Every person of this Territory, either a contracted servant according to the law of contracts, or engaged on trips or as shepherds, shall be compelled to serve for the time stipulated for in the contract; and any servant so contracted who shall fail to serve by abandoning his master or property placed under his care, shall be held responsible

for all costs and damages which through his neglect may result to the owner: *Provided*, That in the same manner in which the servants shall be compelled to comply with this contract, the masters should also be equally obliged, in case any servant should fall sick on any trip, to furnish them, at their own expense, the means of cure, and shall not, under any circumstances, abandon them; but, on the contrary, shall convey them to their homes, where the said servants may be able to procure the means necessary for their subsistence.

SEC. 3. No person shall employ the servant of another without becoming responsible by such act to pay the money due on the first contract; and if they shall furnish him with any money, and the servant shall be compelled to return to the service of his first master for the reason that the second did not have or did not desire to pay the money due, in such case the second contractor shall lose his claim, or shall be compelled to wait until the servant shall have paid the money of the first contractor.

SEC. 4 No court of this Territory shall have jurisdiction nor shall take cognizance of any cause for the correction that masters may give their servants for neglect of their duties as servants, for they are considered as domestic servants to their masters, and they should correct their neglect and faults; for as soldiers are punished by their chiefs, without the intervention of the civil authority, by reason of the salary they enjoy, an equal right should be granted those persons who pay their money to be served in the protection of their property: *Provided*, That such correction shall not be inflicted in a cruel manner with clubs or stripes.

SEC. 5. Sections fourteen and fifteen of an act approved July 20, 1851, relative to contracts between masters and servants, are hereby repealed.

SEC. 6. That all acts or parts of acts, laws or parts of laws, in conflict with this act are hereby repealed.

SEC. 7. This act shall be in force and take effect from and after its passage.

"AN ACT to provide for the protection of property in slaves in this Territory," approved by the territorial legislature of New Mexico, February 3, 1859.

SECTION 1. That every person who shall be convicted of the unlawful killing of a slave, or other offence upon the person of a slave, within this Territory, whether as principal or accessory, shall suffer the same pains and penalties as if the party upon whose person the offence was committed had been a free white person.

SEC. 2. Every person who shall steal any slave with the intent that the owner, or any one having an interest in such slave, present or future, vested or contingent, legal or equitable, shall be deprived of the use or benefit of such slave, shall, upon conviction, suffer imprisonment for a term not more than ten nor less than four years, and be fined in a sum not more than two thousand nor less than five hundred dollars; and every person who shall, by violence, seduction, or other means, take and carry or entice away any slave with the like intent shall be deemed and held, for every purpose

whatever, to have stolen such slave within the meaning of this act. And every person who, knowing any slave to have been stolen as aforesaid, shall aid, assist, or advise in or about the carrying away of such slave, shall suffer the like penalties as are above prescribed against the person stealing such slave as aforesaid.

SEC. 3. Every person who shall carry or convey, or wilfully assist in carrying or conveying any slave, the property of another, with the intent or for the purpose of aiding or enabling such slave to escape out of this Territory, or within this Territory and beyond the control or recovery of his owner or master, shall, upon conviction thereof, suffer the same penalties as are prescribed in the foregoing section of this act. And in any indictment preferred against any person for the violation of any of the provisions of this act, the property in the slave shall be well laid, if charged to belong to any person having an interest in such slave, whether such interest be legal or equitable, present or future, joint or several, vested or contingent

SEC. 4. Every person who shall forge or furnish to any negro, free or slave, any false or fabricated free papers, or false evidences in print or writing, of the freedom of such negro, shall, upon conviction, suffer imprisonment for a term not more than five years, nor less than six months, and be fined in a sum not more than one thousand, nor less than one hundred dollars.

SEC. 5. Any person who shall hire, entice, persuade, or in any manner induce any slave to absent himself from the service or custody of his owner or master, or who shall, upon any pretence, harbor, or maintain any slave so absenting himself from such service or custody, shall, upon conviction thereof, suffer fine and imprisonment as prescribed in section four of this act, and shall besides be liable to the owner or master in a civil suit for damages.

SEC. 6. Any person who shall endeavor to excite in any slave a spirit of insurrection, conspiracy or rebellion, or who shall advise, countenance, aid, or in any manner abet any slave in resistance against his owner or master, shall, upon conviction, suffer imprisonment not less than three months, nor more than three years, and be fined in a sum not less than twenty-five, nor more than one thousand dollars.

SEC. 7. Any person who shall sell, lend, hire, give, or in any manner furnish to any slave any sword, dirk, bowie-knife, gun, pistol, or other fire-arms, or any other kind of deadly weapons of offence, or any ammunition of any kind suitable for fire-arms, shall, upon conviction, suffer the penalties prescribed in section six of this act: *Provided*, That nothing herein contained shall be so construed as to prohibit the owner or master of any slave from temporarily arming such slave with such weapon and ammunition for the purpose of the lawful defence of himself, his family, or property.

SEC. 8. All trade or traffic between free persons and slaves, in any article of goods, merchandise, provisions, supplies, or other commodity whatever, is hereby prohibited, unless the slave have and exhibit the permission of his owner or master, in writing, to trade or traffic, which written permission must specifically set forth the articles or commodities which said slave is authorized to sell, buy, or barter, and any person who shall violate the provisions of this section shall,

upon conviction, suffer the penalties prescribed in section six of this act. And if any person other than the owner or master of such slave shall furnish to any such slave any fabricated, false, or forged permit to trade as aforesaid, he shall suffer the same penalties as are prescribed in the said sixth section of this act.

SEC. 9. Any free person who shall play with any slave at any game of cards, or any other game of skill, chance, hazard, or address, either with or without betting thereon, shall be held guilty of a misdemeanor, and be fined in a sum not exceeding one hundred dollars, or imprisoned not exceeding three months, or both, at the discretion of the court.

SEC. 10. Any person may lawfully take up or apprehend any slave who shall have run away, or be absenting himself from the custody or service of his master or owner, and may lawfully use or employ such force as may be necessary to take up or apprehend such slave; and such person, upon the delivery of such slave to his master or owner, or at such place as such master or owner may designate, shall be entitled to demand or recover by suit any reward which may have been offered for the apprehension or delivery of such slave. And if no reward has been offered, then such person so apprehending such slave shall, upon the delivery of such slave to his master or owner, or to the sheriff of the county in which such slave was apprehended, be entitled to demand and recover from such owner or master the sum of twenty dollars, besides ten cents for each mile of travel to and from the place where such apprehension was made.

SEC. 11. If any sheriff of any county within this Territory shall fail or refuse to receive and keep, with proper care, any runaway slave so offered to him for safe-keeping by such person apprehending the same, or his agent, such sheriff shall, upon conviction thereof, be fined in a sum not less than five hundred dollars, to the use of the Territory; shall further be liable to the owner of such slave for his value, recoverable by civil suit, and shall be ineligible for re-election to the said office.

SEC. 12. The said sheriff, upon receiving such runaway into his custody as aforesaid, shall forthwith cause to be inserted in some public newspaper of this Territory a full and particular description of such slave, stating therein the date of his commitment to jail as a runaway, which advertisement he shall cause to be continued for the space of six months, unless such slave shall sooner be delivered up to his owner or master, upon proof of ownership or right of possession, and payment of all costs, as hereinafter provided.

But if, at the expiration of six months from the date of the first insertion of such advertisement, no owner or master shall appear and reclaim his said slave, then it shall be the duty of the said sheriff to cause to be inserted in such newspaper a further advertisement, setting forth, as before, a full description of such slave, with the date of his commitment as aforesaid, and a recital of the former advertisement, and giving notice that upon a particular day to be named, not less than six nor more than seven months subsequent to the first insertion of such advertisement, he will, at the door of his jail or of the court-house of his county, sell the said slave to the highest bidder for cash.

And on the sale-day so appointed the said sheriff, or his successor in office, shall accordingly, between the hours of twelve o'clock m. and two o'clock p. m., at the place of sale, offer at public vendue and sell to the highest bidder for cash, the said slave, and shall execute to the purchaser his bill of sale for such slave, which shall vest in such purchaser a good and indefeasible title against all persons whatever: *Provided*, however, that if the owner or master shall, at any time before such sale, appear and reclaim the said slave as hereinafter provided, and pay all costs and expenses due to the said sheriff, the taker up, and the newspaper, (for all which the sheriff is authorized to receipt,) then such slave shall be delivered up to such owner or master.

SEC. 13. Before any slave, in custody of the sheriff as a runaway, shall be delivered up to any claimant, such claimant shall first prove by the affidavit of some disinterested person, taken before some judge, justice of the peace, or notary public, (whose official characters, if officers of another State or Territory, shall be legally authenticated,) that he, the claimant, has lost such a slave as described in the advertisement aforesaid; second, the claimant shall make his own affidavit that the slave in custody is the identical slave so lost, and to which he is entitled as owner or master, (or as agent for the owner or master, producing authority as such agent by power of attorney duly acknowledged and authenticated;) third, give bond to the said sheriff, with security to be approved by him, to indemnify him against the lawful claims of all other persons to such slave; fourth, pay all costs and charges, as follows: the fee for apprehension as aforesaid, with mileage, the sheriff's costs of one dollar for receiving such slave into custody, one dollar for each advertisement made as aforesaid, and ten cents per day for each day the said slave has remained in his custody; and also the costs of the newspaper for the advertisement of such slave.

SEC. 14. If, after delivering up such slave to such claimant, any other person should appear and demand the said slave as his right and property, the said sheriff shall assign and deliver the said bond to such person, who may thereon institute suit in his own name and recover the value of said slave, and all damages from the makers of such bond; but the said sheriff shall be thereby fully acquitted of all liability on account of the said slave: *Provided*, Nothing herein shall be construed to prevent the true owner from proceeding against the person in possession of such slave for the specific recovery of such slave, or for any other redress against such person as he may be legally entitled to.

SEC. 15. In case such slave shall be sold, as provided in section 12, then it shall be the duty of the said sheriff, after first deducting the costs and charges aforesaid, and the further costs of five per cent. upon the proceeds of such sale as his commission thereon, to pay over the surplus of such proceeds to the territorial treasurer, taking a receipt therefor, and filing with such treasurer a statement of all costs and charges retained by him as aforesaid; and the said treasurer shall duly charge himself with and account for such proceeds as for other public funds.

SEC. 16. If any person shall fail to maintain or properly provide food, lodging, and raiment for any slave of which he is the owner, any

judge of the district court, probate judge, or justice of the peace, may, and upon sworn information made before him shall, cause such person by his warrant to be brought before him, and upon investigation and proof of such facts, in a summary manner without appeal. Such judge, or justice, may require such person to enter into bond with sufficient surety, payable to the Territory in such sum as he shall require, and conditioned for the support and maintenance of such slave in the future, which bond may at any time thereafter be put in suit upon the affidavit of any person that the same has become forfeited.

SEC. 17. When a slave shall be indicted for felony, the clerk of the court, upon the arrest of such slave, or return of such indictment, shall issue a citation to the owner or master named in such indictment, requiring him to appear and defend his said slave; and in case such owner or master shall not so appear, it shall be the duty of the court trying the same to appoint counsel for such slave, who shall be authorized to direct the summons of all witnesses for the defence, and in all respects to conduct the same; and the court shall allow to each counsel a reasonable fee for his services, and tax the same as other costs, and award execution against the owner therefor.

SEC. 18. Any owner of a slave indicted and convicted of cruel and inhuman treatment to such slave shall be punished by imprisonment not more than one year, and a fine not more than one thousand dollars.

SEC. 19. Any owner of a slave who shall suffer such slave to hire his own time, or go at large and employ himself as a free man, for more than twenty-four hours for any one time, shall, upon the conviction thereof before any justice of the peace, be fined in a sum not exceeding one hundred dollars, to inure to the county treasury.

SEC. 20. Any slave who shall conduct himself disorderly in a public place, or shall give insolent language or signs to any free white person, may be arrested and taken by such person before a justice of the peace, who, upon trial and conviction in a summary manner, shall cause his constable to give such slave any number of stripes upon his bare back not exceeding thirty-nine.

SEC. 21. When any slave shall be convicted of any crime or misdemeanor, for which the penalty assigned by law is in all or in part of a sum of money, the court passing sentence upon him may, in its discretion, substitute for such fine corporal punishment by branding or with stripes.

SEC. 22. No slave, free negro, or mulatto shall be permitted to give evidence in any court against a free white person, but against each other they shall be competent witnesses.

SEC. 23. Marriages between white persons and slaves or free negroes or mulattoes are prohibited, and such rites of matrimony are declared void; and any free white person attempting to enter into or procure a marriage with such slave, or free negro or mulatto, upon indictment and conviction, shall be punished with imprisonment not exceeding six months, and fine not exceeding three hundred dollars.

SEC. 24. Any slave, free negro, or mulatto who shall commit or attempt to commit a rape upon the person of any white woman shall, upon conviction thereof, suffer death.

SEC. 25. The emancipation of slaves within this Territory is totally prohibited.

SEC. 26. No slave shall be permitted to go from the premises of his owner or master after sunset and before sunrise without a written pass specifying the particular place or places to which such slave is permitted to go; and any white person is authorized to take any slave who, upon demand, shall not exhibit such pass before any justice of the peace, who, upon summary investigation, shall cause such slave to be whipped with not more than thirty-nine stripes upon his bare back, and to be committed to the jail or custody of a proper officer, to be released the next day on the demand and payment of costs by the owner or master.

SEC. 27. Any person claiming to be entitled to the possession of any slave which is withheld from him, may either institute his action of replevin therefor as for other property, or upon his sworn petition, directed to the district judge of the district wherein such slave may be, shall be entitled to the writ of *habeas corpus* directed to the person having such slave in possession, upon which such proceedings shall be had as are now had upon such process when instituted for other persons; and if the judge, upon hearing such, shall see fit, he may require the party to whom he adjudges the possession of the slave to enter into such bond to such amount, and with such security as he shall approve, payable to the adverse party, conditioned for the safe delivery of said slave, to abide the judgment or decree of any court of competent jurisdiction, which may be rendered in any suit to be instituted within six months from the date of such bond, which bond, upon breach thereof, may be prosecuted to judgment against the makers of the same, or any of them, by the payee thereof, his executors, or administrators, or assigns; and any court of chancery shall entertain a bill for the specific recovery of any slave without allegation or proof of peculiar value or *pretium affectionis*.

SEC. 28. Any person who shall hold as slave any negro or mulatto who is entitled to his freedom, shall, upon conviction, suffer imprisonment for a term not exceeding ten nor less than five years, and be fined in a sum not less than five hundred nor more than two thousand dollars.

SEC. 29. When a word in this act is used in the masculine form it shall include the feminine; where used in the singular, it shall include the plural, and *vice versa;* and the word "master" shall be taken to include any person who, whether as owner, bailee, or otherwise, has or is entitled to have the immediate possession or control of the slave.

SEC. 30. That this act shall in no manner apply to relation between masters and contracted servants in this Territory, but the word "slave" shall only apply to the African race.

SEC. 31. That this act shall be in force from and after its passage.

MINORITY REPORT.

Mr. TAYLOR, from a minority of the Committee on the Judiciary, submitted the following views:

The undersigned, a minority of the Committee on the Judiciary, to whom was referred bill H. R. No. 64, "to disapprove and declare null and void all acts and parts of acts heretofore passed by the legislative assembly of New Mexico, which establish, protect, or legalize involuntary servitude or slavery within said Territory," &c., respectfully submit the following report:

A temporary government, under the authority of the United States, was organized by an act of Congress, approved September 9, 1850, to extend over the country embraced in the present limits of what is known as "the Territory of New Mexico." By the seventh section of this act it was declared that the legislative power of the government thus organized should "extend to all rightful subjects of legislation, consistent with the Constitution of the United States and the provisions of the act;" and it was also provided that all the laws passed by the legislative assembly should be submitted to the Congress of the United States, and that, if Congress disapproved of them, they should "be null and of no effect." In the second section of the same act it was further provided "that, when admitted as a State" into the federal Union, "the said Territory, or any portion of the same, shall be received into the Union, with or without slavery, as their constitution may prescribe at the time of their admission."

The legislative assembly of the Territory of New Mexico, in the performance of the functions conferred on it, by an act entitled "An act amendatory of the law relative to contracts between masters and servants," approved January 26, 1859, provided that "no court" of the Territory "shall have jurisdiction" or "take cognizance of any cause for the correction that masters may give their servants for neglect of their duties as servants," when "such correction" is not "inflicted in a cruel manner with clubs or stripes;" and by another act, approved February 3, 1859, which is entitled "An act to provide for the protection of property in slaves in this Territory," it established various police regulations necessary to make the services of slaves useful to their owners, and provided for the punishment of different offences by third persons against the rights of those having a claim to these services. The bill referred to us proposes to exercise the power reserved to Congress in the last clause of the seventh section of the organic act, in such a manner as will defeat the action of the territorial legislature for the amendment of their pre-existing legislation with respect to a particular class of contracts, and will also have the

effect of preventing the people of the Territory from giving the protection they desire to give to every species of property recognized within the limits of the United States, and which the citizens of the United States, coming from a portion of the States, might see fit to bring with them into that Territory.

Such a proposition is of the gravest importance, for action upon it necessarily involves a decision upon the powers of Congress, and upon the rights of the citizens of the several States, and of the United States, in the Territories of the United States. Without the provisions embodied in the act of the territorial legislature of New Mexico, which it is now proposed to abrogate, slavery cannot exist there for any length of time. The passage of the bill before us, then, would be equivalent to a direct prohibition of slavery in the Territory of New Mexico by an act of Congress; and that, too, in the face of the declaration contained in the second section of the organic act, that "the said Territory, or or any portion of the same, shall be received into the Union, with or without slavery, as their constitution may prescribe at the time of their admission." But this is not all. The passage of the bill would not only be an exercise of power on the part of Congress to exclude the peculiar property of the people of a portion of the States of the Union from the Territory of New Mexico, but, by interfering with the legislation of the Territory on the subject of contracts, it would also imply the assertion of a right in Congress to enter into the Territories of the United States with a view to regulate and control the municipal concerns of the people there by the exercise of legislative power under the Constitution. It is clear to our minds that no such powers exist in Congress, and we have no hesitation in saying that no such powers can be exercised by Congress without a palpable disregard of the rights of the people of the several States in the Territories of the United States, and without an open violation of the great principles on which our whole system of government is based: and this we will now proceed to show, by an examination of the different features of the Constitution of the United States, considered in connexion with the circumstances which gave it birth; by a reference to the position of the people of the several States with respect to the common possessions of the United States; and by the analysis and development of the relations existing between the government of the United States, and the Territories acquired under a constitutional exercise of its powers, by conquest or cession.

The several British colonies, upon their separation from the mother country in 1776, became, respectively, independent States, and each one was then as fully endowed with all the rights and attributes of sovereignty as any of the other nations of the world. The act which gave them independence, however, involved them in a long and burdensome war for the maintenance of their newly asserted rights, and the necessities of their position compelled them to enter into a league or compact among themselves, so as to enable them to combine all their separate means for carrying on that war against the common enemy, and to place them under the control and direction of a single head. This was effected by the "articles of confederation and perpetual

union," which received the assent of the thirteen States, acting in their separate capacities, and was signed by their duly accredited representatives or agents on the 9th day of July, 1778. The articles of confederation constituted, in truth, a treaty of momentous importance to the several parties to it, solemnly entered into by them, and which had the effect of forming or uniting them, as was stated in the instrument itself, "into a firm league of friendship with each other for their common defence, the security of their liberties, and their mutual and general welfare," and binding them, in their separate, independent, and sovereign capacities, "to assist each other against all force offered to, or attacks made upon, them on account of religion, sovereignty, trade, or any other pretext whatever." The assent of the different States to these articles did not create a national government. There was no intent or desire on the part of the people of any of them, at that time, to create or establish such a government. This is evident from an examination of the various provisions of the instrument; but the fact was not left to inference. It was stated in so many words in the very first clause succeeding that giving the style of the confederacy, when it declared that "each State retains its sovereignty freedom, and independence, and every power, jurisdiction, and right which is not by this confederation expressly delegated to the United States in Congress assembled."

At the time of the separation of the colonies from Great Britain there was a great extent of unoccupied territory embraced within the chartered limits of a number of them. This territory was won from Great Britain with the blood of the people of the several States who had made common cause against a common enemy; and it was insisted on by those of the States which had no unsettled lands within their limits, at a very early day after the successful termination of the war of independence, that the lands in the unoccupied territory should be regarded as the common property of the States united together in the carrying on of that war, and be disposed of for their common benefit. This claim on the part of these States was acceded to by the others, and these lands were voluntarily relinquished by the States having the legal titles to them, and transferred by deeds of cession to the several confederated States as their common property. The territory embracing these lands was of great extent, and as it was obvious that it was destined at no distant day to be filled by a numerous population whose presence there would alone give them value, the necessity of making suitable provision for giving to the settlers in the territory the advantages of a well-ordered government at once attracted the public attention, and the ordinance of 1787, "for the government of the territory of the United States northwest of the Ohio river," was the result.

This ordinance was framed with great care, with the view of providing for the progress of the communities then growing up in the territory from feeble beginnings until they became States and took their places as equals in the confederacy with the original States. The governments of the States to whose joint authority the ordinance owed its existence were founded on the consent of the people of the States, and it seems to have been the desire of the framers of the

ordinance to give to those inhabiting, and to inhabit, the territory, the benefit of the same principle in the temporary government which it created for them. The position of the people in the territory was peculiar. Their numbers were small; they were scattered over a vast region of country; and, as it appears from the language of the ordinance itself, with the exception of the settlers of the Kaskaskias, St. Vincent's, and the neighboring villages, they had no laws of any kind in force among them. In consequence of this want of all laws the ordinance first established a rule for the descent and distribution of the property of intestates, and provided for the disposition of property by last will and testament, and for its being transferred by contracts. These provisions, however, were not to operate upon "the settlers of the Kaskaskias, St. Vincent's, and the neighboring villages;" and were to continue in force only until the government created by the ordinance had exercised the legislative power vested in it. The ordinance then provided for the appointment of a governor, a secretary, and of a court to be composed of three judges, and gave to the governor and judges power to adopt and publish in the territory such laws of the original States, criminal and civil, as they thought necessary and best suited to the people, which were to be in force, unless disapproved of by Congress, until the organization of a general assembly, for which provision was made, when the territory should have five thousand male inhabitants. Upon the organization of such a general assembly, which was to consist of the governor, a legislative council, and a house of representatives, elected by the people, the legislative power was vested in it with "authority to make laws in all cases" not repugnant to the principles and articles in the ordinance "established and declared."

By the fifth article of the ordinance slavery or involuntary servitude was prohibited within the territory, and in some of the other articles various other restraints were imposed on the exercise of legislative power by the people of the territory whilst they remained in the territorial condition. These restraints imposed on them by the ordinance were beyond all doubt obligatory on the people of the territory, and their binding force continued until they passed from the territorial condition, under another provision of the ordinance, on attaining to a population of sixty thousand, and became entitled to admission into the confederacy "on an equal footing with the original States, in all respects whatever," because the territory belonged to the several States of the confederation, as their common property, and these States, which were absolutely free and independent, and possessed general legislative power over their possessions, had adopted the ordinance, acting each in its own sovereign capacity.

The league which had been entered into by the thirteen original States in 1778, by the adoption of the "articles of confederation and perpetual union," though it had enabled them to prosecute the war of independence to a successful termination, was soon found to be entirely inadequate to the proper management of the affairs in which all of the States were concerned in a time of peace. The several States were members of the league in their separate and sovereign capacities, and when the requisitions and ordinances of the "United States in Congress assembled"

were not voluntarily complied with or enforced by the States themselves, there was no mode of compelling action on their part. This evil at last became so great that the public attention in all of the States was awakened to the necessity of devising a new scheme of government for their common advantage, and a convention, composed of delegates from the several States, was called to determine upon one about the time of the adoption of the ordinance of 1787. This convention determined that the interests of the several States required the formation of a national government, to operate directly upon the people of the different States in their individual capacities and through the agency of its own officers; and then proceeded to frame the present Constitution, which, by the unanimous adoption of the several States through the direct action of their people, created the existing national government of the United States, and at the same time preserved the separate and independent existence of the several States, and left them in the full possession of their "sovereignty," and of every power, jurisdiction, and right "not conferred by them on the national government."

The new government was necessarily a government of limited, though sovereign powers, because the several State governments still continued to exist, and were in full possession of all their "sovereignty," and of "every power, jurisdiction, and right," not relinquished by them on the inauguration of the new government. This was an inevitable result of the formation of a national government to act for the benefit of a number of sovereign States, united under its authority, and which was to operate, in its appropriate sphere, within the limits of the several States and upon the persons of their people. But this was not left to inference by the States and the people of the States. Such was the jealousy of the exercise of any power on the part of the new government which had not been vested in it by express grant that it was declared, by an amendment to the Constitution, proposed by the first Congress meeting under its authority and ratified before 1791, that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people."

The powers of the new government were vested in three departments created by the Constitution itself, viz: the legislative, executive, and judicial; and the legislative powers which were vested in the Congress of the United States are defined with great exactness and precision in the instrument. Upon an examination of all of the clauses of the Constitution conferring legislative powers on the national government, it will be seen that there is but a single clause which confers any general legislative power. That clause is the eighteenth one contained in the eighth section of the first article, and gives power to the Congress, to use the words of the clause, "to exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may by cession of particular States and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings." This grant of the power "to

exercise exclusive legislation in all cases whatsoever," though general in its terms, so as to embrace every species of legislative power, is yet limited and restrained in its operation by the very terms of the grant to "places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings," and "to such district (not exceeding ten miles square) as may by cession of particular States and the acceptance of Congress become the seat of the government of the United States;" and upon no rule or principle of construction can the exercise of this general power be extended beyond the established boundaries of the "places purchased with the consent of the legislature of the State in which the same shall be," for the purposes specified, and of the district of country, "not exceeding ten miles square," which may "become the seat of the government of the United States."

All the other legislative powers vested in the national government are conferred by special grants of power to be exercised over certain enumerated subjects of a general and national character and of public concernment, as contra-distinguished from those of a mere local or municipal description, and which are necessary for the regulation and control of the relations of men as members of civil society, which were all left in the possession of the State governments. Thus power over our relations with other countries; to declare war; to raise and support armies; to provide and maintain a navy; to establish post offices and post roads; to lay and collect taxes, duties, &c.; for raising a revenue for the government of the United States to enable it to pay the debts and provide for the common defence and general welfare of the United States; to define and punish piracies and felonies committed on the high seas, and offences against the law of nations, &c., &c., is vested in the national government by so many separate and distinct grants of specific powers: whilst, on the other hand, the States alone have the power to make all laws regulating the tenure and transfer or transmission of property by sale, exchange, descent, or devise, &c.; the form and effect of contracts; the relations of husband and wife; parent and child; master and servant; and the thousand other matters connected with the rights of property, the rights and duties of individuals as members of civil society, and growing out of the various occupations of men, and the multiplied relations of business.

The judicial power of the United States is also limited and restricted in its operation, though, like the legislative power vested in Congress, it is sovereign in its character when exercised by the courts in which it is vested, within the boundaries prescribed for it by the Constitution. This power extends to all cases arising under the Constitution, the laws of the United States, and treaties made under their authority; to cases affecting ambassadors, other public ministers, and consuls; to cases of admirality and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States, a State and citizens of another State, between citizens of different States, between citizens of the same State claiming lands under grants of different States, and between a State, or the

citizens thereof, and foreign States, citizens, or subjects; and beyond these enumerated cases it has always been holden by the judiciary itself, as well as by the other departments of the government, that it neither had nor could have any existence whatever.

But it is otherwise with the executive department of the government of the United States. The power vested in that department, though in most respects restrained, like the other powers conferred on the general government, within the limits of express grants, is in one instance general in its character, and extends to every subject properly within the scope of the sovereign power of an independent State. We allude, of course, to the power to be exercised in the management and control of those great interests which grow out of the relations of sovereign and independent States with each other, as members of the great family of nations. The government of the United States, in everything which concerns the relations of our people with foreign nations, is absolutely sovereign. One great object had in view in its formation was to provide for the successful termination, by contract or by force—that is to say, by treaty or war—of all those conflicts of interest which were certain to spring up between them and other independent States by the exercise of the whole power of the people of the several States under the direction of a single mind. With that design, the treaty-making power and the war-waging power, which are but portions of the executive power of a government, are vested by the Constitution in the President of the United States. The treaty-making power can be exerted by the President only with the concurrence of two-thirds of the Senate. The war-making power can only be exerted with the consent of Congress, as the Congress alone has the power to declare war; but after war is declared, the power of waging it is in the President. With these limitations, the executive department of the government of the United States possesses all the power to make treaties and to wage war which the executive of any national government can rightfully exercise under the law of nations. Both these powers are sovereign in their very nature, and are conferred on the President of the United States by the Constitution in their fullest extent. But this does not give him a right to exercise them at his mere will and pleasure. By the Constitution, the Congress of the United States has the power to make all laws "necessary and proper for carrrying into execution" all the various "powers vested by the Constitution in the government of the United States, or in any department or officer thereof;" and it therefore necessarily follows that the powers vested in the President to make treaties and to carry on war, are subjected to regulation and control by Congress, through the exercise of that power, and of various other powers specially conferred on that department of the government by the Constitution.

The third section of the fourth article of the Constitution declares that new States may be admitted into the Union by Congress. This is the only express grant of power to enlarge the limits of the United States which is contained in that instrument. Does it follow from this fact that the national government was left without power to acquire and hold additional territory in any other manner? We are of opinion that it does not. It is a settled principle of the law of nations

that every people have a right to hold any additional territory which has been voluntarily ceded to it by another people, or which it has obtained possession of by conquest in the prosecution of a necessary and just war. We before stated that the government of the United States in everything which concerns the relations of our people with foreign nations is absolutely sovereign. If this be so, then, as the treaty-making power and the war-making power have been conferred upon it by the Constitution in their utmost plenitude, it follows by necessary implication that the national government of the United States is as fully invested with the power to acquire territory by treaty or by conquest, in the settlement of disputes and controversies with other nations, as that of any of the other sovereign and independent States of the world.

But when either of these implied powers has been constitutionally exerted, and new territory has passed under the authority of the United States by voluntary cession or by the exercise of military force, then new and most important questions arise, viz: What is the position of this new territory? By what authority is it to be governed? And what are to be its future relations with the United States? In our opinion these questions can be best answered by recurring to the past action of our government with respect to territory thus situated, and by a brief development of the principles on which that action was based. Since the foundation of the national government the United States have had large accessions to their territory at different periods and under different circumstances, so that a practical solution to these questions has been given from time to time, as they were presented in their varying aspects, by the concurrent action of all of the departments of the government. Upon an examination into the conduct of the government with reference to the newly acquired territories, it will be found that it was always guided by the same principles; and as we are persuaded that the action taken by the government was, in every instance, in perfect consonance with the law of nations and the principles of the Constitution of the United States, we shall now proceed to give a rapid sketch of that action, beginning with the last instance of the acquisition of additional territory, viz: that resulting from our war with Mexico, because that places the whole subject under consideration more completely in view at one time than any other which has occurred in our history; and will afterwards notice that had in the other instances so far as is necessary to show that in every instance it was based on identically the same principles.

On the 13th of May, 1846, Congress declared that by the act of the republic of Mexico a state of war existed between that republic and the United States, and authorized the President "to employ the militia, naval, and military forces of the United States" to prosecute it to a speedy and successful termination. Under this authority the President of the United States, through whom alone the executive power of the national government can be constitutionally exercised, became entitled to wage war upon the republic of Mexico, to invade her territories, and subjugate her people, and to exercise over them, wherever subjugated by the military force of the United States, all the rights

which are conferred upon the conqueror by the laws of war. The naval forces of the United States were in consequence at once directed by the President to blockade the Mexican ports, and as soon as the necessary preparations could be made the territories of the Mexican republic were invaded at all points by our military forces. The progress of our arms was rapid, and in a very short period of time the power of Mexico was overthrown, and her entire territory in the military possession of the United States. Whilst the war was in progress the belligerent right of drawing supplies from the enemy without paying for them, and of exacting contributions for the support of the army, was everywhere exercised under the instructions of the President by our military and naval commanders in the territory occupied by our forces. After the whole of Mexico was in our possession, the President directed her ports to be opened to the trade of all nations, and such duties as he prescribed were levied and collected by the officers in our naval and military service, under his orders, for the use of the United States, upon the imports into the country; and measures were then taken by him to make the internal as well as the external revenues of the nation available to us, which were, happily, rendered unnecessary by a treaty of peace signed at Guadaloupe Hidalgo on the 2d day of February, 1848.

But this was not the only exercise of the executive power of the United States over the territory of Mexico whilst it was in our military possession. By the law of nations conquerers have the right to establish military or civil governments for the conquered territory, as they may deem necessary or convenient for the accomplishment of their designs. In our war with Mexico we did not contemplate the permanent conquest of the country. Our views were limited to obtaining redress for the wrongs she had done us, and an indemnity for our just demands against her. Owing to the internal condition of Mexico at the commencement of the war, it was certain she was unable to indemnify us for our demands by the payment of money, and we were therefore compelled to look forward to such an indemnity as it was in her power to offer; that is to say, by a cession of territory. For that reason, whilst we adopted no measures tending to the formation of a permanent government over the whole of Mexico, our course was different with respect to those portions of territory in our possession which were contiguous to the territories of the United States, and which it was thought might furnish the indemnity to which we had a just claim. Immediately after the declaration by Congress that war existed between the United States and Mexico, our military and naval forces were put in motion, with a view to the conquest of the provinces of New Mexico and California, and instructions were given to those in command, if the operations were successful, to establish temporary civil governments for the protection of the persons and property of their people, and for the preservation of quiet and order among them.

General Kearney, to whom was intrusted the command of the military forces destined to this service, was in full possession of the province of New Mexico early in September of the same year; and by orders dated on the 22d of that month, he established a temporary government, for the management of the local concerns of its people,

upon the model of our existing territorial governments, and having appointed all the officers necessary to put it into successful operation, continued his march towards California, for the purpose of carrying out the remainder of his instructions. But he had been preceded in the performance of this duty by other officers of the government. Instructions of the same tenor had been sent to our naval commanders in the Pacific on the breaking out of the war, and the province of California had been subdued by our arms early in August, and a new civil government was erected there by orders issued by Commodore Stockton, in the latter part of the same month, in his capacity of "Commander-in-chief of the United States forces in the Pacific ocean," &c., similar in character to that erected, under the same instructions, by General Kearney for the government of New Mexico.

The possession of portions of an enemy's country by an act of war imposes certain duties on a belligerent, during the continuance of that possession, with respect to the peaceful inhabitants who are thus placed under its dominion; and it was the intention of the United States to perform all of those duties towards the inhabitants of California and New Mexico, by the creation of temporary governments of such a character as would secure to them the enjoyment of their civil rights, and the maintenance of public order. But this was not the only object of our government. When the invasion of Mexico was decided on, the government of the United States determined to prosecute the war with a view to obtain a territorial indemnity for our claims against her, and for the wrongs she had inflicted on us by an unjust attack upon our people. This is at once apparent from the instructions issued to General Kearney from the War Department, dated June 3, 1846. In these instructions the Secretary of War says: "Should you conquer and take possession of New Mexico and Upper California, you will establish temporary civil governments therein—abolishing all arbitrary restrictions that may exist—so far as it may be done with safety." And the Secretary further tells him, he "may assure the people of those provinces that it is the wish and design of the United States to provide for them a free government, with the least possible delay, similar to that which exists in our Territories," and that "they will then be called on to exercise the rights of freemen, in electing their own representatives to the territorial legislature." In obedience to these instructions, General Kearney, in a proclamation to the inhabitants of New Mexico, issued immediately after taking possession of that province or department, announced that "it was his intention to hold the department, with its present boundaries, (on both sides of the Del Norte,) as a part of the United States, and under the name of 'the Territory of New Mexico;'" and declared that "all persons residing within the boundaries of New Mexico" were absolved "from any further allegiance to the republic of Mexico, and were claimed by him as citizens of the United States." An announcement to nearly the same effect was also made to the inhabitants of California by Commodore Stockton, who acted under instructions of the same description.

The governments organized by General Kearney and Commodore Stockton, respectively, were in substance alike; the laws in existence at the time of the conquest were continued in force until changed by

competent authority ; the municipal officers of cities, towns, departments, and districts, were retained in the performance of their proper functions, and provision was made for replacing them with others by popular elections. A governor, and other officers, for the performance of the executive duties of the new governments, were appointed by the officers in command, who were to hold their offices at the pleasure of the President. In California legislative power was vested in the governor and a legislative council ; the members of the first legislative council were to be appointed by the governor for a certain term, and after the expiration of that term their successors were to be elected annually by the people ; and the power of the legislative council thus created was declared to "extend to all rightful subjects of legislation." In New Mexico legislative power was vested in a general assembly, to consist of a legislative council and a house of representatives, to be chosen by the inhabitants of the several counties and districts, and their general assembly was to "have power to make laws in all cases, both civil and criminal, for the good government of the people, not inconsistent with or repugnant to the Constitution and laws of the United States;" in both Territories an absolute veto upon the passage of laws was given to the governor. Some of the provisions embodied in the instruments framed for the establishment and organization of these governments proposed to confer political rights under the Constitution of the United States on the people of the conquered territories ; such rights could only be conferred on them by the action of Congress, and in consequence the President disapproved of all such provisions when those instruments were communicated to him, and instructed the different officers in authority in those Territories not to carry such portions of them into effect. In all other respects the measures adopted for the temporary government of the Territories were approved, and more especially so far as they permitted their inhabitants to participate in the selection of agents to make or execute the laws to be enforced among them, as will be seen by reference to the despatches from the War and Navy Departments to General Kearney and Commodore Stockton, respectively, dated on the 11th of January, 1847.

The instructions given to our naval and military commanders, and the measures adopted by them for carrying these instructions into effect by the establishment of temporary governments over New Mexico and California, were laid before Congress on the 22d of December, 1846, by the President, in answer to a resolution of the House of Representatives of the 15th of the same month ; and in his message accompanying these various documents he declared his approval of them, with the exceptions already referred to. The temporary governments thus created and organized, and carried on under the executive authority of the United States, continued to exist and perform all the functions of rightful governments for the security of our conquests, for the preservation of public order, and for the protection of the rights and the promotion of the interests of the inhabitants of those Territories, until the war with Mexico was terminated by a treaty of peace, signed at Guadalupe Hidalgo, on the 2d day of February, 1848.

By the terms of this treaty the Territories of New Mexico and Cali-

fornia were ceded to the United States; and the President, in his message of July 6, 1848, communicating the treaty to Congress after it had been ratified by him, by and with the advice and consent of the Senate, and ratifications had been exchanged with Mexico at Queretaro on the 30th of May preceding, called attention to this fact, and urged upon Congress the propriety of immediate action on their part for the establishment of territorial government, and the extension of our laws over those possessions. Owing to the operation of causes to which it is unnecessary to allude, Congress did not act on this suggestion of the President at that session, nor for some time afterwards. By an act approved March 3, 1849, the revenue laws of the United States were extended over California, and it was erected into a collection district; but inasmuch as no United States courts were in existence there, it was provided in the act that all violations of those laws, committed within the new collection district, should be prosecuted in the district court of Louisiana, or the supreme court of Oregon, "as if such cases had arisen in the district or Territory where the prosecution" was brought. With this exception, Congress took no action whatever with respect to the newly acquired Territories until the 9th day of September, 1850, when California was admitted into the Union as a State, and the existing territorial government of New Mexico was created by their authority, and the Constitution and all the laws of the United States which were not locally inapplicable were declared to "have the same force and effect within the said Territory of New Mexico as elsewhere within the United States." And it was not until the 28th of the same month that "all the laws of the United States not locally inapplicable" were, by act of Congress approved on that day, extended over California.

From this recital of facts it appears that temporary governments, formed and established by the President in the exercise of the executive power of the United States vested in him by the Constitution, without the aid or intervention of Congress, were in existence over the Territories of New Mexico and California, not only during the continuance of the war in which they were conquered, but for upwards of two years after the close of that war, and whilst they were no longer holden by us as conquests, but as possessions belonging to us under a voluntary transfer from their former owners, made to the United States by a treaty of cession. And this question then presents itself: What is the source or foundation, under our system of government, of the power to establish and maintain temporary governments over Territories acquired by the United States since the formation of our national Constitution.

The power, most certainly, is not conferred by that clause of the Constitution which declares that "the Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property of the United States." This is evident from the following, among other circumstances connected with that clause. First. The terms and plain signification of the words of the whole provision, indicate that territory to be transferred as property, and with reference to its pecuniary value alone, was the object with respect to which the power "to dispose of and make all needful rules

and regulations respecting," &c., was given, and that it could in no sense be applicable to, or be made to operate upon population with a view to their government. And second. It could not have been intended to provide for the creation of governments over the Territories without the limits of the organized States, because that had been already provided for in the ordinance of 1787, adopted by the several States, acting in their separate capacities as independent sovereignties, just before the formation of the Constitution, and such a provision was therefore unnecessary. Nor is the power conferred by any of the special grants made to Congress, or to any other department of the national government in the Constitution. That is apparent, at once, from the slightest examination of the various provisions of that instrument. From what portions of the instrument, then, it may be asked, is the power derived? To our minds the answer to this question is clear. It is derived from the general grant of the executive power of a national government, which is embodied in the Constitution.

We before stated that this power, though in most respects restrained, like the other powers conferred on the general government, within the limits of express grants, is general in its character, so far as it relates to the management and control of those great interests which grow out of the relations of sovereign and independent States with each other as members of the great family of nations, and that it extends to every subject connected with those interests which are properly within the scope of the sovereign power of an independent State. It was by the exercise of this power, under the law of nations, that the temporary governments, necessary to secure our conquests, and to fulfil the duties imposed on us towards their inhabitants during the war with Mexico, were established by the President. It was by the exercise of this power that the governments thus established by the President were maintained and carried on after the termination of that war, and until Congress, by its own action, changed the relations of the Territories over which they operated to the United States, by admitting California into the Union as a State, and organizing a new government for the Territory of New Mexico. And it is through the exercise of the power "to make all laws necessary and proper for carrying into execution" the executive power of the government, which is conferred on it by the last clause of the 8th section of the 1st article of the Constitution, that Congress derived its authority to establish the new territorial government for New Mexico, enacted by the act approved September 9, 1850.

The creation of a government for a territorial dependency is an act of sovereignty, which it has been the usage among nations in all ages of the world to perform through the agency of the executive departments of their respective governments when a necessity for it has arisen. This is shown by all history, and it cannot be necessary to refer to particular instances in support of the position. The executive power of our national government, it is declared in the Constitution, is "vested in a President of the United States of America." But this declaration does not give that great officer the whole executive power of the national government, and enable him to exercise it at his pleasure. A large portion of the executive power of the government

of the United States is dependent upon the action of Congress for its exercise, because the power "to make all laws which shall be necessary and proper to carry into execution" the "executive power" "vested in the President," as well as all other powers vested "in the government of the United States, or any department or officer thereof," is specially conferred upon it by the Constitution. Another portion of this power, however, may be exerted without any action of Congress, when there is a necessity for it; as, for instance, the power to create and maintain a temporary government over a newly acquired territory.

Congress, it is true, in virtue of the power conferred on it by the Constitution, to make all laws necessary and proper to carry into execution the executive power of the United States, has an unquestionable right to create and maintain temporary governments over the territories which are acquired by conquest, whilst the war in which the conquest is made continues, as well as after its termination. But if Congress fails at any time to exercise this power, the executive power vested in the President by the Constitution must necessarily be exerted by him for the creation and maintenance of such governments over Territories so situated, whenever they are required for the promotion of the interests of the United States, or for the protection of the inhabitants of the Territories in the enjoyment of their just rights under the law of nations. This power, as we have already seen, was so exercised by the President over the Territories which had passed under the dominion of the United States, in the proclamation of the war against Mexico, with the entire approbation of Congress and of the whole American people. And the government created for California by such an exercise of power by him has been decided to be a rightful government after the termination of the war, and so long as it was left in existence by Congress, by the highest judicial tribunal of the United States, in a suit between individuals, in which the validity of the acts of an officer exercising authority under it was contested so as to put the whole question directly at issue.

"The President, as constitutional commander-in-chief of the army," say the court in that case, "authorized the military and naval commanders of the United States forces in California to exercise the belligerent rights of a conqueror and to form a civil and military government for the conquered Territory." "The formation of the civil government in California, when it was done, was the lawful exercise of a belligerent right over the conquered territory. It was the existing government when the territory was ceded to the United States, as a conquest, and did not cease as a matter of course, or as a consequence of the restoration of peace; and it was rightfully continued after," &c., "until Congress legislated otherwise."

Whenever there is a necessity for the organization of a temporary government over a Territory of the United States, and the power of Congress is exerted for its creation and establishment, that exercise of power is an act of sovereignty on the part of the United States, performed by Congress, under the Constitution, and which can be performed and carried into effect only through the instrumentality of the executive power vested in the national government. The act itself is

not an act of legislation in the proper sense of that term. A legislative act, in the usual acceptation of the phrase, is a rule established by the law-maker for the guidance of the actions of men, and for the regulation of their rights with respect to each other, as members of civil society, which is to operate on them directly in their individual capacities. A law of Congress creating a territorial government has nothing in common with such an act. It does not operate on persons in their relations with each other, or with the government of the United States as individuals, but upon men as aggregated together and constituting a political community. The action of Congress in its enactment is of the character of that of the people of a State when they adopt a constitution for their own government. It confers political rights upon the community, defines their nature, and fixes their extent, and prescribes the manner in which they are to be exercised. The power to make such a law is not specially conferred on Congress by any express provision of the Constitution. It can be derived, by no violence of construction, from any one of the specific grants of power made to it in that instrument. It is the result alone of the power to make all laws necessary and proper to carry into execution the executive power of the United States, which is conferred on Congress in the last clause of the eighth section of the first article of the Constitution; and, as the whole executive power of the United States is vested in the President by the second article of the Constitution, it necessarily follows that Congress can organize a territorial government only by the regulation and control of the executive power of the national government through the agency of the presidential office in which that power is vested.

The executive power vested in the "President of the United States of America" is ample for the formation of temporary governments over newly-acquired territories, when a necessity exists for forming such governments, and no action has been taken on the subject by Congress. Without such power in the Chief Magistrate it is manifest, from our past experience, that the public interest and the interests of the inhabitants of our newly-acquired Territories might be at times exposed to serious injury. But the occasions for the independent exercise of this power by the President will be of very rare occurrence under the ordinary operation of our political system. The instances of New Mexico and California are as yet the only ones, and it is obvious, from the constitutional relations existing between the executive power and Congress, that it will never be so exercised unless in cases of grave exigency. It will be seen, however, from the slightest examination into the action of Congress in the organization of new territorial governments, that the creation of a government is not the result of an original power vested in Congress, but of the exercise of a power conferred on it which is auxiliary to the executive power vested in the President. It is not necessary for our purpose to refer to all the acts of Congress of this description. We shall only mention some of the earlier ones which furnish a distinct illustration of the view just presented.

We have already stated that provision was made by the ordinance of 1787, adopted by the States in their sovereign capacities, before

the formation of the Constitution of the United States, for the temporary government of the territory of the United States northwest of the Ohio river. The Territories south of the Ohio river, which are now included within the boundaries of the States of Kentucky and Tennessee, never had any territorial governments established over them; they were embraced in the chartered limits of Virginia and North Carolina, and were respectively severed from the States to which they belonged, with the consent of those States, and admitted into the Union as new States, without passing through a territorial condition under the authority of the United States. The first original exercise of power by the United States for the organization of a temporary government over a territorial possession was in reference to what was known as the "Mississippi Territory," lying south of the State of Tennessee, and which now constitutes the States of Mississippi and Alabama. The act of Congress for this purpose, approved April 7, 1798, simply declared that "the President of the United States is hereby authorized to establish therein a government in all respects similar to that now exercised in the territory northwest of the Ohio river, excepting and excluding the last article of the ordinance made for the government thereof by the late Congress," &c. This act, it will be seen, is nothing more or less than an exercise of the sovereignty of the United States by a law for carrying it into execution through the executive power of the United States vested in the President, in the manner Congress saw fit to prescribe; and when the people of the western part of this Territory were authorized to form a constitution for their own government, with a view to the admission of that portion of the Territory into the Union as a State, the act of Congress providing for the continuation of the then existing Territorial government over the remaining parts of the territory, by the name of "Alabama," was of the same character. It declared that the offices in existence, and the laws then in force, in that portion of the Territory not embraced in the contemplated new State, should "continue to exist and be in force until otherwise provided by law," and provided for the appointment of a governor and secretary by the President, and for the organization of a legislature, by the authority of the governor, immediately after this appointment, with the same powers as were possessed by the legislature of the Mississippi Territory; and when, in the opinion of Congress in 1800, it was expedient to have new temporary governments over different portions of the northwestern territory, with a view to carrying into effect the provisions of the ordinance of 1787, for the formation of States, the action of Congress differed in nothing from that adopted before with reference to the government of the Mississippi Territory.

The first accessions to our national territory were obtained by treaty. France, by a voluntary transfer, ceded the province of Louisiana to us by the treaty of Paris, on the 30th of April, 1803; and Spain, also, by a voluntary transfer, by the treaty made at Washington on the 22d of February, 1819, ceded to us the provinces of East and West Florida. In each of these treaties it was expressly stipulated that the inhabitants of the ceded territory should "be incorporated in the Union of the United States, and admitted as soon as possible, according

to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States.

Soon after the ratifications of the treaty of Paris were exchanged, Congress, by an act approved October 31, 1803, authorized the President to take possession of, and occupy, the territory ceded by France to the United States, and to employ any part of the army and navy of the United States, &c., for that purpose, and in order to maintain our authority there; and declared that, "until the expiration of the present session of Congress," unless provisions for the temporary government of the said territories be sooner made by Congress, all the military, civil, and judicial powers, exercised by the officers of the existing government of the same, shall be vested in such person and persons, and shall be exercised in such manner as the President of the United States shall direct, for maintaining and protecting the inhabitants of Louisiana in the free enjoyment of their liberty, property, and religion. On the 26th of March following, 1804, an act was passed erecting Louisiana into two Territories, and providing for their temporary government. The southern part of the province was constituted a Territory of the United States by the name of the Territory of Orleans. The laws in force there at that time, and not inconsistent with the act, it provided, should continue in force until altered, modified, or repealed by the legislature. The executive power of the new government was vested in a governor, to be appointed to hold office at the pleasure of the President. A secretary of the Territory was also to be appointed, and to hold office, by the same tenure; and it was declared that the legislative power should "be vested in the governor, and in thirteen of the most discreet persons of the Territory, to be called the legislative council, who shall be appointed annually by the President;" and that the legislative power thus vested should be competent "to alter, modify, or repeal, the laws" then in force, and should also "extend to all the rightful subjects of legislation," with the proviso that no law should be valid which was inconsistent with the Constitution and laws of the United States, or which should lay any person under restraint, burden, or disability, on account of his religious opinion, profession, or worship. The residue, or northern portion of the province of Louisiana, was called the district of Louisiana, and the power to provide for its temporary government, by making laws, establishing courts, &c., was vested in the governor and judges of the Indiana Territory, under the same restrictions as to the exercise of the legislative power previously imposed on the legislative power granted to the governor and legislative council of the Territory of Orleans.

The provinces of East and West Florida, as we before mentioned, were ceded to the United States on the 22d of February, 1819. On the 3d of March, 1819, Congress, by act approved on that day, authorized the President to take possession of the ceded territory and provide for its temporary government in the same manner as had been before done with respect to Louisiana. No possession seems to have been taken of the Floridas under this act; and, on the 3d of March, 1821, a similar act was again passed, under which the Floridas were taken pos-

session of, and a temporary government over them was organized and maintained by the President until March 30, 1822, when provision was made by Congress for a new government, resembling in all respects that established in 1804 for the Territory of Orleans.

It will be found, on comparison, that the temporary governments of Louisiana and Florida, formed by acts of Congress, were almost identical in character with those established in California and New Mexico, by an independent exercise of the executive power of the United States by the President. The only substantial difference between them consisted in this: In the cases of New Mexico and California provision was made for the exercise of legislative power by representatives elected by the inhabitants; and various other public functions were to be performed by agents chosen by the people. But this was not so in Louisiana or Florida. All the persons engaged in the administration of their respective governments were appointed by the President of the United States, or by the governor appointed by him. And it is for that reason that a distinguished jurist, in a recent opinion delivered in a case which has attracted the attention of the whole American people, has said that "the territorial government of Louisiana was an imperial one."

When the various acts of Congress providing for the organization of temporary governments in the Territories of the United States which were passed before 1820 are analyzed, it is plain they were all founded on the same principle.

The act of creating or establishing a government is an exercise of political power, as it is termed, in contradistinction to the civil power; and the acts of Congress, accordingly, so far as they form or establish governments, make grants of political power to the communities over which the governments are to operate, and create the official organization through which the political power granted is to be exercised. Thus these acts establish the various offices which are thought requisite for the management of the public business of each community, and provide how they are to be filled. They create an executive—a body for the exercise of the legislative power—and a judiciary to decide upon and enforce the rights of individuals under the laws in force among them. But these acts furnish no instance of the exercise of any civil power of legislation, of a local or municipal nature, by Congress, over the inhabitants of a Territory. The first instance in our history, in which such a power was asserted and exercised by Congress, under our existing Constitution, occurred in 1820, when, in the act providing for the admission of the State of Missouri into the Union, it was declared that in all the territory ceded by France to the United States, under the name of Louisiana, which lies north of thirty-six degrees and thirty minutes north latitude, and not included within the limits of Missouri, "slavery and involuntary servitude, otherwise than in the punishment of crimes, whereof the parties shall have been duly convicted, shall be, and is hereby prohibited."

All must be familiar with the circumstances under which this new exercise of power by the general government took place. For the first time in our existence as a nation, the lust of power impelled ambitious men in our councils to attempt the formation of a sectional

party, when the people of the Territory of Missouri applied for admission into the Union as a State, by arraying the people of the northern non-slaveholding States against those of the south in which African slavery was a permanent domestic institution. Unmindful of the fact that the Constitution, and the whole public action of the States united in the confederacy prior to its formation, contemplated that new States, upon their admission into the Union, were to have the same rights of sovereignty, freedom, and independence as the old, these men insisted that Missouri should not be admitted into the Union as a State, unless her people would submit to the enfranchisement of their slaves as a condition precedent to their admission. It is not easy to conceive of anything more completely in conflict with the principles of the Constitution, or more violative of the right of a people to self-government, than the pretension then set up. But wrong and unfounded as it was, it united nearly all of the representatives of the non-slaveholding States in its support, and gave rise to a contest which threatened the overthrow of the government. In the midst of a conflict which menaced our very existence as a nation, it was proposed that the restriction attempted upon Missouri should be waived, and that, in place of it, slavery and involuntary servitude should be prohibited in the Territories of the United States lying west of the Mississippi river and north of thirty-six degrees and thirty minutes north latitude. This proposition was acceded to by a majority of both houses of Congress. And thus whilst the full fury of the storm, which an attempt to impose an unconstitutional condition upon a new State had excited, was upon them, Congress, by its action, placed an unconstitutional restriction on the people of a portion of our Territories upon the statute-book in the 8th section of the act, approved March 6, 1820, providing for the admission of Missouri into the Union.

Can any one acquainted with our system of government doubt the unconstitutionality of the prohibition contained in that section of the Missouri act? We cannot believe it. Slavery, or that relation between men by which one owes personal service to another, has existed in every age of the world. African slavery has existed in modern times, by the authority of every civilized State which has had colonial possessions. It was established and maintained in the North American colonies by English influence and English power. It was an existing institution in all of the States which took part in the struggle against the British crown for independence, in 1776. It was an existing institution in all of the States but one, when the Constitution under which we now live was formed; and it is recognized in various provisions of that great instrument, as a rightful institution among the American people, subsisting by municipal authority, wherever it is their will and pleasure to have it; and, by that very fact, is placed as absolutely beyond the reach and control of the federal government as though it existed in a foreign State. The federal government, as we have before said, was formed for the accomplishment of certain great national objects. No power of general or municipal legislation whatever is given to it, except with reference to "such district (not exceeding ten miles square) as may, by cession of particular States,

and the acceptance of Congress, become the seat of government of the United States," and to such places as may be purchased "for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings." With that exception the federal government has no authority over the local or municipal concerns of the American people, whether in the States or the Territories of the United States; and Congress can no more legislate to exclude slavery from a Territory, or to establish it in it, than it can in a State. The want of legislative power in Congress over the whole subject, in the Territories as well as the States, is absolute, because it is one of local or municipal concern, and no legislative power whatever, of that nature, has been given to Congress by the Constitution. To see this, it is only necessary to examine its various provisions. The fact that it was so, was impressed upon the people when they were called on to vote for its adoption, for they were assured by those who had taken a chief part in its formation, "that the jurisdiction of the federal government is limited to certain enumerated objects which concern all members of the republic," and "that the local or municipal authorities form distinct portions of supremacy, no more subject within their respective spheres to the general authority, than the general authority is subject to them within its own sphere." And that it has always been so regarded by the American people is evident, because, since the foundation of the government to the present day, there has been no instance in which Congress has attempted to exercise a power of local or municipal legislation in the Territories of the United States, except under the pressure of a sectional feeling for the prohibition of slavery, by the provision contained in the Missouri act, or by the adoption of the Wilmot proviso, of late years, in territorial acts, until this House acted in that direction, during the present session, with reference to the Territory of Utah.

Whether the newly acquired territory of a sovereign State passes under its dominion by conquest or by voluntary cession from its former owner, without any previous war, can make no possible difference in its position, under the law of nations, with respect to the new sovereign. The effect of the transfer, whether it be the result of the employment of military force, or consent, is precisely the same upon the territory, for in either case the authority of the former sovereign is at an end, and gives place to that of the new one; and the authority of the new sovereign over it is precisely the same, unless it has been specially restrained by the stipulations contained in the treaty when it has been acquired by voluntary cession. It is a settled principle of the law of nations that on such a transfer of territory the relations of the inhabitants with each other undergo no change. The local or municipal laws which determine the rights and duties of persons, and regulate their intercourse and general conduct with respect to each other in civil life, continue in force until altered by or with the consent of the new sovereign. The relations of the inhabitants with their former sovereign, and the government which has acquired their territory, alone are changed. The same act which transfers their country transfers the allegiance of those who remain in it, so that what may be properly denominated the political law, operating over the entire

community in their collective capacity as a people, is necessarily superseded by that of the new sovereign, while the laws of a civil nature, operating upon individuals, remain undisturbed.

After the transfer of a country has been made, the new sovereign, by the usage of nations, has a perfect right to remodel its political institutions as it may see fit; and in the exercise of that right it is competent for it to confer upon the people such political rights as it may deem proper or expedient, or to withhold them altogether, and retain them to be exercised by itself. But whilst this is true as a general proposition under the public law of the world, the exercise of the right of the new sovereign is necessarily controlled by the constitutional principles of the government through which the right of sovereignty is to be exerted. If the government of the new sovereign be one invested with general and unlimited legislative power, it may itself exercise all the powers of political and civil government over it by legislating directly for the regulation of the concerns of the people of a local or municipal character, as well as of any other. This is the case with respect to the government of Great Britain. Though in the ordinary course of government Parliament does not directly legislate for the colonies, yet the general legislative power of Parliament over all possible subjects of legislation extends not only throughout the united kingdom, but over all its colonies and foreign possessions; because, to use the language of the greatest of the writers on English law, "the power and jurisdiction of Parliament is so transcendent and absolute that it cannot be confined, either for causes or persons, within any bounds;" and "it can change and create afresh even the constitution of the kingdom and of Parliament themselves;" and "can, in short, do everything that is not naturally impossible," &c. It is otherwise, however, with the government of the United States. There is no general and unlimited legislative power in Congress. The legislative power of the federal government is limited to particular subjects. It was conferred by special and well-defined grants for certain enumerated purposes of national concern, and does not extend to any subject whatever of a local or municipal character; and it is therefore obvious that while the government of the United States may acquire new territories by conquest or treaty like other nations, by the exercise of the executive power vested in it, it is nevertheless without the power to govern them in the same manner.

When that power has been exerted in a just war, so that additional territories are brought under our authority, such territories constitute a possession of the sovereignty of the United States. The national government, however, in the exercise of the sovereign power vested in it, is but a trustee, under the Constitution, for the people of the several States, in their respective capacities as separate and distinct sovereignties, and it, therefore, necessarily follows that the new possession is acquired for their common advantage and benefit, and must be so holden while it remains in that position. Such a possession is, in truth, the common property, politically speaking, of the several States composing the federal Union, and, the States being equal under the Constitution, their respective citizens have equal rights in it, and as citizens of their respective States, like the joint owners of any other

property held in common, they have full liberty to enter it, with all the rights appertaining to them in their own States, and to be protected while there in the enjoyment of these rights by the federal authority so long as the undivided sovereignty of the United States is over them.

That a citizen should carry with him the rights secured to him by the laws of his country wherever he goes, when no barrier is opposed to them by a conflicting jurisdiction, is no new pretension. Among the Grecian republics those who went abroad to establish colonies carried with them to their new homes all the institutions of their respective countries. When English subjects establish themselves in an unoccupied country, it is the settled doctrine in England that the laws then in being, and which are the birthright of every Englishman, are immediately there in force. Nor is there any difference in this respect between a conquered and an unoccupied country. In a conquered country, just as in an unoccupied one, there are no conflicting laws in the way of a conquering people. They have full possession of all the branches of the public administration, and, as there are no laws in existence but such as they choose to enforce, when they enter the country with the property, no matter of what description, recognized by their own laws, that property is entitled to the same protection from the national authority exerted there which it before enjoyed at home.

Although slavery does not exist in all of the States, it is recognized as a rightful institution under our governmental system, wherever citizens of the United States, forming distinct political communities, may see fit to maintain it. Slaves, as persons, enter, as an element, into the apportionment of the representation of the States in Congress, and in the apportionment of direct taxes among the States; and as property, those holding them are protected in their rights to them by a provision for their being delivered up to their owners when they escape into another State, and by a prohibition on such State from discharging them from service or labor, by any law or regulation of its own. Our situation as a people is, in one respect, peculiar. We have no law of property common to the whole United States. Each State makes that law for itself, within its own limits, and as the States are equals, under the Constitution, the rights of property, resulting from these laws of the several States, must be of equal validity and effect wherever the sovereignty of the United States alone exists and gives protection. Under these circumstances, every citizen of the United States who goes into a conquered territory with his slaves, which were rightfully holden by him as property under the law of the State from which he removes, is as much entitled to be protected in the possession of that species of property by the national authority, as any other citizen from a non-slaveholding State can be, to be protected in the possession of other species of property. And this consequence cannot be prevented, by the fact, that the laws of the country, before the conquest, prohibited slavery. The fact of conquest at once abrogates all the political laws of the country, and such of the civil laws as would be injurious to our own citizens, or would prevent the exercise or enjoyment by them of any of their rights, whilst in the conquered ter-

ritory. And this is precisely what took place in the territories conquered by our arms in the war with Mexico. Many officers in the public service carried their slaves with them in the war of invasion, and held them wherever they went, under the public authority. After the conquest of New Mexico was complete and a civil government had been organized there by the executive authority of the United States, considerable numbers of the citizens of slaveholding States went into the territory to establish themselves, accompanied by their slaves, and were fully protected in the enjoyment of that species of property by the action of the new government.

The government of the United States is founded on the consent of the people, and its policy towards other nations is one of peace. When we engage in war it is only in self-defence, or in vindication of our just rights and of the national honor. The federal government possesses none but delegated powers, and there is certainly no power given to it by the Constitution "to establish or maintain colonies bordering on the United States, or at a distance, to be ruled and governed at its own pleasure." Nor is there any power given to it "to enlarge its territorial limits in any way except by the admission of new States." Under such a frame of government it is evident that no conquest can be long held as a mere dependency, subject to the external rights of sovereignty vested in the national government, and which can only be exercised through the instrumentality of the executive power vested in it, because to do so "would be inconsistent with its own existence in its present form." A possession of territory by conquest is in its very nature precarious and temporary. At the conclusion of the war two courses, in regard to such a territory, are alone open to us. We may relinquish its possession on such terms and conditions as justice and propriety seem to warrant, so that it will pass again under the dominion of its former possessor; or we may retain it, with a view to its incorporation into the Federal Union under the Constitution, with the consent of its inhabitants. We adopted the latter course in the case of New Mexico, and acquired a permanent title to it by a treaty of cession, after a contest of arms, as we had before acquired a permanent title to Louisiana and Florida by treaties of cession after contests of diplomacy.

But the obligation imposed on the American people by the principles of the national Constitution, to extend the advantages of self-government to the inhabitants of New Mexico, was not left to mere inference at the time of the cession. In the treaty making the cession, as in the treaties ceding Louisiana and Florida to the United States, it was solemnly stipulated that the inhabitants who chose to remain in the territory should acquire the rights of citizens of the United States, and should "be incorporated into the Union of the United States, and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States, according to the principles of the Constitution," &c. The treaty of cession changed in no respect the relation between the Territory of New Mexico and the government of the United States. Its only real effect was to convert a temporary possession of the territory into a permanent one, and to authorize us

to look forward to its admission into the Union as a new State, when it had the necessary population.

Whilst a territory is in a state of pupilage, prior to admission into the Union, the Congress of the United States, though absolutely without power to legislate upon subjects of a local or municipal character for the regulation of the rights of property and of the relations among men as members of civil society, has an unquestionable right whilst in the exercise of the sovereignty of the United States for the organization of a temporary government over it, to use its discretion in granting larger or more limited political powers to the government, or to the people of the territory. The extent of the powers granted, and how, and by whom they shall be exercised, are questions of mere expediency which must be decided with reference to the necessities, position, and character of the people. If the laws in force in the territories, when the new government is created, are suited to its condition, and the state of pupilage is to be short, the territory might be safely left without any legislative power. The failure to exercise legislative power for two years is not productive of any inconvenience in ordinary times, as we see continually in practice in those States where there are only biennial sessions of the legislature. If, on the other hand, legislative power in the government is thought necessary to modify existing laws, or to enact new ones, as the changed or changing circumstances of the inhabitants may require, the power conferred may be limited to certain specified subjects—or certain subjects may be excepted from its operation—or, as is most usual, a general legislative power may be given to it, subject only to the limitation imposed by the prohibitions contained in the Constitution of the United States, or to the restrictions embodied in the organic act; and the power thus accorded may be exercised, as Congress in its wisdom may direct, by a legislative body appointed directly by the President, as was the case with respect to the territorial governments organized by Congress for Louisiana and Florida; or by a general assembly composed of representatives chosen by the people by regular elections, as provided for in most of the acts creating such governments.

When Congress was about to proceed to the formation of a new territorial government for New Mexico, in 1850, there was a rightful government in existence there which had been established by the United States before the cession; and under the authority of that government, the laws of Mexieo recognizing the system of peonage were continued in force, and our citizens who had gone into the territory from slaveholding States with their slaves were protected in their possession and enjoyment of them as property. This was the existing condition of things when New Mexico was ceded to the United States in 1848; and that condition was unchanged when Congress provided a new territorial government for it by the act approved September 9, 1850. By this act a legislative assembly for the Territory was organized to consist of a Council and a House of Representatives, the members of which were to be elected by the people, after an apportionment of them respectively among the several counties and election districts of the Territory; and all the township, district, and county officers, not

otherwise provided for in the act, were to be appointed or elected in such manner as the legislative assembly might direct. And, as we have before stated, the legislative power conferred on the territorial government was to extend to "all rightful subjects of legislation consistent with the Constitution of the United States and the provisions" of the act itself; and all the laws passed by the legislative assembly were required to be submitted to Congress, to which was reserved the right of disapproving them and making them "null and of no effect."

By the laws of Mexico persons are permitted to enter into contracts with others by which they bind themselves to labor in their service, and for their advantage, at a certain rate of wages, for a stipulated period of time, or until they have repaid the sums of money advanced them; and the courts are clothed with the powers necessary to enforce a specific performance of all such contracts. Those who bind themselves to labor in the service of others under such contracts are known as peons, and the permission given to persons to enter into the contracts and bind themselves legally to the performance of the labor stipulated, and the authority vested in the courts to compel those binding themselves to labor in fulfilment of the obligation imposed on them by the contracts, constitute what is known as the system of peonnage. This system was, at the time of the passage of the act creating the new territorial government in 1850, and is now, in existence in New Mexico, under the former laws of the country which have been continued in force ever since it was first taken possession of by the United States.

A right on the part of one to whom labor or service is due as a peon, to correct the person owing the labor or service, in a reasonable manner, for neglect of his duties, is a necessary incident to a contract giving right to such labor or service. But this right of correction is not peculiar to the system of peonnage. It is recognized under "the common law" as a necessary incident of the relation of master and servant which is now and always has been an authorized and established relation between man and man, wherever that system of law has prevailed. If any one will take the trouble to look into Bacon's Abridgement, under the title or head of "master and servant," he will discover this. In that work, as well as in every other English work on the same subject, it is laid down as elementary under "the common law," that "a servant may hire himself for what time he pleases," and that the relationship which grows out of the contract between the servant and master, gives to the master on the one hand "superiority and power," and imposes on the servant "duty, subjection, and, as it were, allegiance on the other." But this is not all. It is stated in the same work that "It is clearly agreed that a master may correct and punish his servant for abusive language, neglect of duty," &c., and that in an action of assault and battery brought by his servant against him, he may justify that he was his servant, gave him provoking language, neglected his duty," &c., and that therefore *moderate castigavit, i. e.*, he chastised him moderately; and on the issue of *immoderate castigavit*, "if it appears in evidence that the punishment was such as is usual for masters to give to their ser-

vants, the master will be acquitted." And so it is with masters in regard to apprentices. "A master," it is stated in Bacon, "may correct his apprentice for disobedience and improper conduct." But such correction must be moderate. And this is now, most certainly, the law in philanthropic England; and we believe it to be the law at this time in most of the northern States of the Union in which the common law enters into and makes a part of their system of law.

The act of the legislative assembly of New Mexico, approved January 26, 1859, which the bill referred to us proposes to repeal, is unquestionably designed to prevent vexatious suits against masters by their servants, or peons, in cases where the correction given them has been reasonable and "moderate," and such as it is "usual," to use the language of the English common law, for masters to give their servants. This is evident on reading the act; for the jurisdiction of the courts is left entirely unimpaired when the "correction" given is inflicted in a cruel or unusual manner. The right in Congress to disapprove of this act, and of the act "to provide for the protection of property in slaves" in the Territory, approved February 3, 1859, is claimed on the ground that a general right to "disapprove," and declare "null and of no effect," all laws of the legislative assembly of the Territory, was reserved to Congress expressly in the organic act. That there is such a general reservation, in terms, embodied in the organic act, is certain. But it does not therefore follow, as a consequence of the reservation, that the right to disapprove of every law passed by the legislative assembly of the Territory results from it. On the contrary, it is plain, upon every known rule of construction, that no such right exists, or was intended to be given, under that reservation.

It was the design of Congress, in passing the act, to give to the people of New Mexico the right of self-government with respect to their domestic concerns. This is evident from the whole tenor of the action of Congress. The permission accorded to them to exert, through their representatives, the political power of legislation for themselves, subject only to the condition that their legislation should not conflict with the provisions of the Constitution of the United States, or with those of the organic act, was a concession to them from the United States, the rightful sovereign of the territory, of the power to exercise what a writer on the public law designates as "the internal and permanent rights of sovereignty" in their own territorial limits. The provision in the act requiring all the laws passed in the Territory to be submitted to Congress, and giving to Congress the power, if they are disapproved, of annulling them and destroying their force and effect, was introduced into it with but a single object, viz: to enable Congress to prevent any violation of the condition imposed on the legislative power conceded, by enabling it to examine for itself into the character of the acts passed, with a view to setting those aside which should be in conflict with the provisions of the national Constitution, or those contained in the act conceding the power to legislate. No right to annul a law which does not contravene some provision of the Constitution of the United States, or of the organic act, can be derived from the reservation spoken of, unless vio-

lence is done to the plain import and meaning of the words of the whole section in which it is contained, or it is considered that, though the power to legislate on all rightful subjects of legislation was given in express terms, it was not intended it should be exercised.

The right of self-government was conceded to the people of New Mexico by the organic act, with respect to their internal affairs, as completely as it is exercised in the States under the Constitution, with one single exception. The legislative power in the Territory, as in a State, is general. In a State, as in the Territory, it is subjected to the same restraints—the limitations imposed by the national Constitution. The only difference in the extent of the legislative power conceded to the territorial government from that belonging to a State grows out of the difference in its position as to the United States. A State is an independent sovereignty, which is entitled to exercise within its own limits "every power, jurisdiction, and right" not delegated to the United States by the Constitution, nor prohibited by it to the States; whilst, on the other hand, the Territory is a dependency of the national government, acting as the trustee of the several States; and nothing can be legitimately done within it to destroy or impair the rights of the citizens of the several States to go into it as the common possession of the States, and be protected in their persons and property by the public authority there, so long as it continues in that condition.

The legislative power conferred on the legislative assembly of New Mexico had been exercised nearly nine years by her people, when, in the months of January and February, 1859, they saw fit to pass two laws—one amendatory of the law relative to contracts between masters and servants, and another to provide for the protection of property in slaves in the Territory—on subjects which are necessarily embraced in the power intended to be conferred by the use of the expression "rightful subjects of legislation," employed in the territorial act; and it is forthwith proposed to disapprove of these laws, and declare them "to be null and void, and of no effect," by the action of Congress. And why is this? It certainly will not be pretended that they are not within the scope of the legislative power conferred on the people of New Mexico. One of the laws is merely amendatory of the law in relation to a particular class of contracts which has been in force over that Territory and people for over a century and a half. If the law authorizing this class of contracts were not approved of by the people of New Mexico, it would not have been continued in force. The law amendatory of it was undoubtedly called for by the public sentiment of the Territory, or it would not have been passed. And the same may, unquestionably, be said with respect to the law providing for the protection of property in slaves there. Why, then, we ask, is it proposed, at this time, to annul these territorial laws by the authority of Congress? It is a hostile movement in the prosecution of the war now waged by a sectional party in the Union against the institutions of the people of another portion of the Union; and if it should be carried into an act, it would be a palpable usurpation of power by Congress; a breach of the compromise entered into in 1850 between the northern and southern people, through their representatives in

Congress, of which the very act in question made a part; and will be subversive of the rights of our citizens established in New Mexico under the principles of the Constitution.

The attempt to annul the act of New Mexico for the protection of property in slaves is a blow aimed at slavery itself. Without the police regulations embodied in that act slavery cannot long exist in the Territory; and the design of the movers of the bill is to exclude slavery from New Mexico altogether by congressional action. But if any one thing, of a political nature is more certain than another, in the eye of reason, it is that Congress can do nothing in that direction. As we have already said, Congress can no more legislate to exclude slavery from a Territory than it can from a State. The want of legislative power in Congress over the whole subject, in the Territories as well as the States, is absolute, because it is one of local or municipal concern, and no legislative power whatever, of that nature, has been given to Congress by the Constitution. What Congress cannot do directly it certainly cannot do indirectly. The pretence that it may be done by interposing a congressional veto upon the action of the territorial legislature in this case is too shallow to veil the real motive. Whatever color there might be for the interposition of the congressional veto in other cases, there certainly can be none with respect to a law for the protection of slavery. Such an exercise of the legislative power was contemplated in the territorial act itself. That act specially provided, in the second section, that, when admitted as a State, the Territory should be admitted into the Union with or without slavery, as might be prescribed in their constitution at the time of admission. What was the scope of that provision? It looked forward to the adoption of the institution of slavery by the people of New Mexico, in their territorial condition, if they desired it: for of what possible avail or utility to them, or to the people of the south, for whose benefit it was adopted, would that provision have been if the right to adopt the institution in the Territory had not preceded the formation of a constitution on its becoming a State? To deny this, and defeat the legislation of the Territory for the protection of property in slaves whenever the people there choose to adopt such legislation, would not only be a usurpation of power by Congress, but a most complete abrogation of the compromise of 1850. This is too plain to require any further comment.

Nor can the power of Congress be exerted, as proposed in the bill under consideration, without a departure from a great principle of constitutional right, recognized in the act creating the territorial government of New Mexico, and without an entire overthrow of the right of self-government in their domestic concerns, which has been solemnly conceded to the people of New Mexico by the government of the United States, after the maturest deliberation, and in strict consonance with the fundamental principles of our system of government.

The right of the citizens of the United States, in their capacity of citizens of their respective States, to enter the common possessions of the United States acquired by conquest or treaty, with all the rights appertaining to them in their own States, and to be protected while there in the enjoyment of these rights by the federal authority so long as the

undivided sovereignty of the United States is exerted over them, is indisputable, as we before said, under the principles of the Constitution and of the public law of nations. This right, however, of citizens as individuals, great as it is, is subordinate to the greater rights of the citizens of the United States in their collective capacity, when organized into political communities with the consent and by the authority of the government of the United States. Certain rights of sovereignty within their national limits and over their relations with foreign countries are vested in the government of the United States by delegation. But the absolute sovereignty of the nation resides in the people of the several States. This is apparent from the most cursory examination of the great charter of our government as originally prepared by its framers. But the fact was not left to be established by construction. The convention of a number of the States, at the time of adopting the Constitution, expressed a desire, in order to prevent misconstruction as to the extent of its powers, that a declaratory clause should be added to it; and this was accordingly done in the first year of the national existence by the adoption of the tenth article of the amendments to the Constitution, which declares that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

This reservation, in favor of the people as well as of the States, of powers not delegated, could have no possible effect, unless it was to operate in their behalf when they passed beyond the boundaries of the States constituting the Union, and was designed to secure them in the possession of the rights of self-government in the common possessions of the United States when they were assembled together in them in sufficient numbers to form new communities. At the time when this express reservation was made, the unoccupied territories of the United States, lying beyond the boundaries of the several States, were in the course of rapid settlement by our own citizens going into them from the States to which they had respectively belonged, and provision had been made by the confederated States, acting in their sovereign capacities through their accredited delegates, for the exercise of the right of self-government on the part of the emigrants in the ordering of their internal affairs, when "five thousand free male inhabitants, of full age," were shown to exist in a particular district of country; and for the erection of the territory occupied by them into a State, by the formation by themselves "of a permanent constitution and State government," whenever such district contained "sixty thousand free inhabitants," and for its admission, "by its delegates into the Congress of the United States," under the old confederation, "on an equal footing with the original States." The reservation to the people, as distinguished from the States, of powers not delegated to the United States by the Constitution, can by no possibility apply to the people as citizens of a State, for there the citizens of a State are themselves "the State." The absolute and undivided sovereignty of the State, resides in them; the constitution and laws which form the government of a State and fashion and control its domestic institutions, are but emanations of their will, and subsist or disappear and take new shapes at their pleasure. A reservation of power to a State is nothing more nor less

than a reservation of power to the people of a State; the reservation of "powers not delegated," made in the tenth article of the amendments to the Constitution, "to the people," in addition to that before made in the preceding words "to the States respectively," must necessarily have been intended to operate in some manner for the benefit and advantage of "the people of the United States" as contradistinguished from the people of the several States; and, in our opinion, it does so operate as to secure to them the rights of self-government in the territories held as common possessions of the United States by the national authority when their numbers are sufficient to constitute a distinct political community, and there is nothing in their situation which makes it proper or desirable, in the public interest, that the exercise of that right should be temporarily withholden from them.

There can be no doubt that instances have already occurred, and that they may again occur in our history, in which it is not only the right but may be the duty of the national government to withhold the power of internal self-government for a time from the people of a territorial possession. That was undoubtedly the case with respect to Louisiana and Florida after their acquisition by treaty, because of their want of knowledge of the practical workings of that system at the time. And it is also possible, when the exercise of that right has once been conceded to a political community occupying a Territory of the United States, that it may become necessary to withdraw the power to do so, as it is likely will be the case, at no distant day, hereafter, in regard to Utah. The political sovereignty of the United States can only be divested in one of two ways, viz: by the voluntary relinquishment of the Territory, which would result from returning it to its former possessor by treaty, or the entire abdication of all power over it, without such a return to its former possessor, so that it would become an independent State, with all the rights of both internal and external sovereignty, like any other independent State of the world; or by its admission into the Union as a new State, under the Constitution, when it would also become a sovereign and independent State, but so situated, under the paramount authority of the federal Constitution, that, though left to exercise the internal and permanent rights of sovereignty within its own limits, it would be obliged, whilst it remained a member of the federal Union, to permit the federal govment, in virtue of the delegation made to it through the Constitution, to exercise all her external rights of sovereignty concerning her relations with foreign states, whether of peace or war. Until the divestiture of the sovereignty of the United States over a territorial possession in one of these ways it continues to exist. Any delegation of political power for its government, while in a territorial condition, is necessarily temporary in its very nature, and is liable to be resumed by the federal government whenever the public good requires it, and the resumed power may be delegated anew, to be exercised in some new manner, for the preservation of the rights and the advancement of the interests of the people. It is only in an extreme case, however, when the danger is imminent and the advantage great, that a resort to the resumption of the political power once granted to the people of a Terri-

tory for their temporary government should be resorted to. But the right itself is a necessary incident of the power and right to govern.

In the exercise of the power to govern a Territory, the government of the United States, it is true, has, from necessity, the sole right to decide upon the manner in which it is to be exerted. But this is not an absolute right to be exercised at its mere discretion. It is to be exerted through the agencies appointed by the Constitution, and in obedience to its principles. The United States cannot provide for the regulation and control of the rights of property, and of the rights and duties of men in their various relations with each other in the Territories, by a direct exercise of legislative power through Congress. This, as we have before shown, is impossible, because no legislative power over such subjects is vested in Congress by the Constitution. The only mode in which it can be effected is by the organization of a territorial government, and conferring upon it, in the exercise of the national rights of sovereignty, such political powers, to be exerted through the agency of persons appointed by the executive authority of the United States, or elected by the people of the Territory, as may be necessary for the attainment of the end aimed at. The last mode—the one most in consonance with the spirit of our institutions, and which is in entire accordance with Constitutional principle—was adopted in regard to New Mexico, after the fullest consideration, and under circumstances of such national solemnity as made it certain that the act adopting it met the hearty concurrence of the whole American people; and we are now asked, though our situation is absolutely unchanged, to overturn that great work, which concerns a whole people, upon a pretence that would be scouted out of any court of justice, on an issue made before it in which the merest personal interest of a simple individual was involved!

What are we coming to? Is it the intent of any considerable portion of our people that an imperial power shall be hereafter exercised by Congress in the territorial possessions of the United States? Is the federal government to put off "the character impressed on it by those who created it" when it enters into our common territories, and assume "despotic powers which the Constitution has denied it?" A great judicial authority has said, in a late recorded opinion of signal importance, that the national government enters into our common possessions "with its powers over the citizen strictly defined and limited by the Constitution, from which it derives its own existence, and by virtue of which it alone continues to exist and act as a government and sovereignty?" And the same authority adds that the federal government "has no power of any kind beyond it," &c. The tendency of things abroad, even in those countries subjected, almost from time immemorial to despotic sway, is, to the exercise of all the great powers of government, in accordance with the movements of public sentiment. And now, we would ask, Can it be the intent and design of any party in the "model republic" to repudiate the exercise of the power of self-government by the people of a Territory when it can be safely accorded to them under the principles of the Constitution, and that, too, at the very time when imperial France is engaged

in introducing the principle of "satisfied nationalities" into the political system of continental Europe?

The right of self-government is the corner stone of our national edifice. It is the very sun of our political system, which, by its pervading force, sustains in their positions the various governmental bodies entering into it, gives them motion, and, by its continued influence, enables them to move silently and harmoniously, each in its appropriate sphere, in the direction required for the promotion of the interests of the common whole. Unhappy, indeed, is he among the American people who cannot see and feel and recognize the existence of this great principle. The people of the Territory of New Mexico are now in the possession of this right within their own limits in virtue of a delegation of political power rightfully made to them by the sovereignty of the United States through its constitutional organs, and they have done nothing since to forfeit or make them unworthy to exercise it, or which can justify Congress in any attempt to withdraw it, or to hinder or impair its exercise by them, directly or indirectly, in in any way, shape, or manner whatever. And for that reason, and for the reasons already given, we now say that it is our settled conviction that the proposed bill is in direct opposition to the principles of the compromise of 1850, which were recognized and established in their operation over the Territory of New Mexico by the provisions of the organic act itself; that it is in opposition to the rights of the former people of New Mexico under the treaty of cession; and that it is subversive of the rights and privileges under the Constitution of the United States of the citizens of the several States who are at this time established there. And we therefore respectfully recommend that the bill be rejected.

MILES TAYLOR.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 509.

MILITARY ROAD FROM FORT UNION TO SANTA FÉ.

[To accompany Bill H. R. No. 200.]

MAY 10, 1860.

Mr. BONHAM, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred a bill to provide for the completion of the military road from Fort Union to Santa Fé, New Mexico, report:

That Captain J. N. Macomb, captain of topographical engineers, March 9, 1858, submitted to General Garland, commanding the department of New Mexico, his estimate for the completion of the said road, from which it appears that Congress, on the 3d of March, 1855, appropriated $16,000 for this road, and that the sum of $35,000 is requisite to complete it. He says:

"The fact of the 'road from Fort Union to Santa Fé' being a part of the great mail-route from Missouri to the largest settlement in the Territory of New Mexico, and it being the only portion of the route upon which serious natural obstacles to easy transit exist, is deemed of sufficient importance to justify the asking for such a sum as will make the road at least equal, in facility for travelling, to the natural road across the plains, which constitutes the chief portion of the route."

In a letter of March 11, 1858, addressed to Colonel J. J. Abert, commanding corps of topographical engineers, Washington, D. C., Captain Macomb says:

"The road between Fort Union and this point (Santa Fé) has been carefully examined by me, with the aid of my principal assistant, who has drawn up a careful estimate for perfecting the road, which I hope may be approved and the amount granted."

Colonel J. J. Abert, chief topographical engineer, in a report to the Secretary of War, of November 1, 1859, says:

"*Military road from Fort Union to Santa Fé.*—The balance of the appropriation has been exhausted in opening the communication between parts of the work previously executed, so that all of the new work is made available, though a narrower road has been adopted for the want of funds.

"There is requisite to complete this road $35,000."

Your committee report back the bill with a recommendation that it do pass, and that Captain Macomb's estimates be printed as a part of this report.

MILITARY DEPARTMENT OF NEW MEXICO,
Santa Fé, N. M., March 9, 1858.

GENERAL: For the purpose of carrying out the views of the Hon. Mr. Otero, as expressed to you in his letter of the 19th November, 1857, I would respectfully suggest that he be requested to ask from Congress the appropriation of the following named sums, to wit:

1st. For the completion of the "military road from Fort Union to Santa Fé," in the Territory of New Mexico, as by estimate in detail herewith submitted, $35,000.

2d. For explorations and surveys to ascertain the most feasible routes for, and the probable expense of, constructing the following named military roads and bridges in the Territory of New Mexico: *Provided*, that such sums as may remain of said appropriations, after paying the expenses of surveys, explorations, and estimates, shall be applied towards the construction of said works respectively, viz:

Military road from Fort Union to Taos, $10,000.
Military road from Taos to Fort Massachusetts, $10,000.
Military road from Santa Fé to Fort Stanton, $20,000.
Military road from Albuquerque to Fort Stanton, $17,500.
Military road from Albuquerque to Fort Defiance, $15,000.

3d. The sum of $10,000 for minute examinations and surveys, and the preparation of estimates for constructing permanent bridges across the Rio Bravo del Norte, at or near the following named points, to wit:

One at or near Fort Massachusetts;
One at or near Cañada;
One at Albuquerque, or at Ysleta; and
One at a suitable point in the county of Doña Ana.

There are doubtless many points in the vicinity of the above-named routes where it is desirable to have some reliable means of furnishing permanent supplies of water, but it may probably be deemed expedient to await the result of the experiments in artesian well-boring (now in progress) before deciding upon the plan for effecting this end.

The fact of the "road from Fort Union to Santa Fé" being a part of the great mail-route from Missouri to the largest settlements in the Territory of New Nexico, and it being the only portion of the route upon which serious natural obstacles to easy transit exist, is deemed of sufficient importance to justify the asking for such a sum as will make the road at least equal in facility for travelling to the natural road across the plains, which constitutes the chief portion of the route.

All of which is respectfully submitted by your most obedient servant,

J. N. MACOMB,
Captain Topographical Engineers.

Brigadier General J. GARLAND,
Commanding Department New Mexico.

Estimate for the completion of the road from Fort Union to Santa Fé, New Mexico.

From Santa Fé to the Arroyo Hondo, five miles and three chains	$1,500
From the Arroyo Hondo to the Rock Corral, four miles and twenty-six chains	4,500
From the Rock Corral to El Cañon de Apache, by present main road, four miles and fifty-nine chains, and by trail, which can be improved, two miles and thirty-nine chains	8,500
From the mouth of Cañon de Apache to El Arroyo de Pecos, by present road ten miles and seventy-three chains, and by trail, which can be improved, nine miles and sixty-four chains	10,500
From El Arroyo de Pecos to San José, crossing of the Pecos river, eighteen and a half miles	7,500
From San José to Tecalote, fifteen and a half miles	6,500
From Tecalote to Las Vegas, eleven miles	3,500
From Las Vegas to Fort Union, by one route thirty miles, by another twenty-seven miles	4,500
Bridges across the rivers Pecos, Moro, Sapello, and Gallenas, $1,000 each	4,000
	51,000
From which deduct amount appropriated for this road by act of 3d March, 1855, No. 58, chapter CLXIX	16 000
Making amount requisite to perfect this road	35,000

Respectfully submitted to General Garland.

J. N. MACOMB,
Captain Topographical Engineers.

SANTA FÉ, *New Mexico, March* 9, 1858.

36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 510.

RICHARD CHENERY.

[To accompany Bill H. R. No. 171.]

MAY 10, 1860.

Mr. SCOTT, from the Committee on Indian Affairs, made the following

REPORT.

The Committee on Indian Affairs, to whom the memorial of and bill No. 171, *for the relief of Richard Chenery, were referred, report:*

That this claim is for compensation for one hundred thousand pounds of beef furnished the United States agents, at eight cents per pound, and by them fed to the Indians on Russian river and Clear lake, in the State of California, in the months of March and May, 1852.

The facts as set forth in the memorial and accompanying papers are clearly established, to wit: The Indians at that time were in a very turbulent condition, and it was only with the utmost exertion that an outbreak was prevented. They wanted and demanded to have large supplies of beef furnished them by Colonel McKee, the United States Indian agent—threatening hostilities and plunder on the white settlements if their demands were refused, as they were destitute of food to live upon; they had been removed from their favorite hunting grounds by the commissioner, and demanded the fulfilment of the obligations which the commissioner had entered into on behalf of the government. But Congress had failed to make any appropriations, and the department at Washington had consequently no funds on hand to meet these engagements. Colonel McKee, in view of the circumstances, stated the facts to Mr. Chenery, and solicited him to furnish the one hundred thousand pounds of beef required at that time for the use of the Indians, and to receive in payment his certificate showing the purchase, which certificate he assured Mr. Chenery the government would doubtless pay with promptitude. Mr. Chenery furnished the beef accordingly, and accepted the certificate from Colonel McKee, signed by himself as United States Indian agent and United States disbursing agent, which certificate accompanies the memorial, and certifies "that there is due to Mr. Richard Chenery from the United States the sum of eight thousand dollars ($8,000) for one hundred thousand pounds of beef delivered according to contract to Geo. P. Armstrong, temporary Indian agent for the tribes on Russian river and at Clear lake, as per said Armstrong's receipts, dated March 23 and May 23, 1852, which amount shall be paid to said

Chenery, or his order, on return of this certificate, out of the first money that may come to my hand from the Indian department and applicable to such purposes;" signed R. Mckee, United States Indian agent, and also disbursing agent for California.

There being no question that the beef for which compensation is claimed was furnished to the officers of the government in good faith, and applied successfully to prevent hostilities and a cruel war of extermination between the whites and Indians, in furtherance of the policy adopted by Congress, there can be no question that the government ought to pay for property so applied to public uses, and the committee accordingly recommend the passage of the bill.

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